2621.

SUPREME COURT OF THE UNITED STATES.

No. 101.

TERENCE FARRELLY, EDWARD O. MORTON & AL., HEIRS AND REPRESENTATIVES OF FREDERIC NOTRIBE, APPELLANTS,

v.

WILLIAM W. WOODFOLK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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In the Circuit Court of the United States for the District of Arkansas.

To the Honorable, the Judges of the Circuit Court of the United States, for the District of Arkansas:

William W. Woodfolk, a citizen of the State of Tennessee, complainant, brings this, his Bill of Complaint, against Lewis L. Refel, A. B. K. Thetford, and Terrence Farelly, as executors of Frederic Notrebe, deceased, Mary Felicia Notrebe, widow, and Edward Morton, and Mary, his wife, sole heir of the said Frederic Notrebe, and Sandford C. Faulkner, John Drennen, Henry L. Biscoe, Luther Chase, and James H. Walker, residuary Trustees of the Real Estate Bank, defendants, all of whom are citizens of Arkansas.

And, thereupon, your orator complains and says, that in the year 1845, having at his farm in Jackson County, Tennessee, a number of slaves whom he wished to employ in the cultivation of cotton in the South, he was, upon inquiry, informed by his friend Dr. John Waters, of Nashville, that the said Frederick Notrebe, then resident at the Post of Arkansas, in the State of Arkansas, owned a valuable tract of land on the Mississippi River, in the County of Chicot, and State last aforesaid, suitable for your orator's purposes, which he was anxious to sell; and said Waters, with your orator's consent, wrote to said Notrebe, stating your orator's wishes in the premises.

That, on the 7th of April, 1845, in answer to said letter, said Notrebe wrote to your orator, that he was the owner of a valuable tract of land lying on said River, and in said County and State, which he would sell for sixteen thousand dollars, and give immediate possession, and a warranty deed after final payment of the purchase-money.

That, in the early part of May, 1845, your orator left his residence in Nashville, Tennessee, for the purpose of examining said lands, and on examination, being well pleased with them, concluded to purchase them, provided Notrebe would reduce his price, which your orator presumed he would do, as the lands were unimproved; and he wrote to Notrebe to ascertain the least price that he would take for the entire tract, and in answer, Notrebe replied, under date of May 17th, 1845, that the tract contained only thirteen hundred and eighteen $\frac{1}{100}$ acres, of which he attached to his letter a plat, and that the least he would take for it was ten dollars and fifty cents an acre; all of which will more fully appear by true copies of said letters, marked Exhibits No. 1 and 2, and prayed to be taken as part hereof, the originals being held by your orator, subject to the order of the Court and inspection of the parties.

That, in the month of October, 1845, your orator went to the Post

of Arkansas, State of Arkansas, to see Notrebe, and purchase the land if possible; and, in the interview between them on that occasion, Notrebe repeated what he had stated in his aforesaid letters, as to his ownership of the lands, and that, upon final payment, he would make a good title to your orator; and added that said lands were then under a mortgage to the said Real Estate Bank of the State of Arkansas, for about the sum of twelve thousand dollars, for so much money lent him by said Bank, in order to pay which, he desired a larger payment in advance than he had at first intended.

That your orator, being a stranger in Arkansas, unacquainted with its people, and ignorant of its legislation and laws, and particularly those relating to its land titles, confided implicitly in Notrebe's said representations, he having been made known to your orator as a man of perfect integrity and truth. But perceiving, or thinking he perceived, that Notrebe was not accurately informed of the true condition of the title of his lands, he took aside the defendant, Farrelly, who was said Notrebe's friend and legal adviser, and who was well-informed of Arkansas affairs, and intimately acquainted with Notrebe's landed property, and titles, and business transactions; and in whom, moreover, Notrebe appeared to place all possible confidence, and inquired of said Farrelly, if said lands were subject to no other incumbrance than said mortgage to said Bank for about twelve thousand dollars? and your orator was assured by said Farrelly, that they were not subject to any other incumbrance, and that said Notrebe, being a man of great wealth and strict integrity, was able to, and would certainly, as he had promised, remove that incumbrance, and be prepared, by the time the purchase-money was to be paid, to make an undoubted title in fee.

That said Notrebe also represented to your orator, that the estate of his son-in-law, William Cummins, deceased, owned an undivided half of two quarter sections, to wit: the northwest quarter of section 21, and the northeast quarter of section 22, which lay adjoining the aforesaid tract of $1318\frac{84}{100}$ acres; and that your orator should by all means purchase those two undivided quarters, and proposed selling the same to your orator at the same price, to wit, ten dollars and fifty cents per acre; and he further stated to your orator, that by or before the time the purchase-money was to be paid for the $1318\frac{84}{100}$ acres he would purchase Cummins's half of said two quarter sections, and would then be able to make a clear title in fee simple to all of said fourteen hundred seventy-eight $\frac{84}{100}$ acres of land.

That trusting to these representations your orator, on the 22d day of October, 1845, became the purchaser of the lands represented on the plat attached to the letters aforesaid, of the 17th of May, 1845, to wit, of the

N.E. fractional quarter of section	27
S.E. quarter of section .	28
N.E. " " . .	28

N.W.	quarter	of	section	28
S.W.	"	"		22
S.E.	"	"		21
S.W.	"	"		21
N.W.	"	"		21
N.E.	"	"		21
N.W.	"	"		22

All in Township 19 south, of Range one west, and containing altogether fourteen hundred and seventy-eight acres and eighty-four hundredths of an acre, at and for the price of fifteen thousand five hundred and nineteen dollars.

That the whole of this sum, except the sum of sixteen hundred and eighty dollars, was the price of the first eight of said quarter sections, and Notrebe's interest in the other two; and the said sum of sixteen hundred and eighty dollars was the price of the half of said two last quarter sections belonging to the defendant, Mary Morton, heir of the said William Cummins.

That your orator paid down the sum of seven thousand dollars sixty-six cents, so large a sum being advanced to enable Notrebe to remove said incumbrance of about twelve thousand dollars, and for the balance of the price of said Notrebe's interest in the land, your orator executed to him his three several promissory notes, under seal, each for the sum of twenty-two hundred and seventy-nine dollars, payable in one, two, and three years from the first of April, 1846; and for the interest of said heir of said Cummins in said two last-mentioned quarter sections, your orator executed to Notrebe his note under seal for sixteen hundred and eighty dollars. And to secure the title to said land he took from Notrebe and his wife their bond, conditioned that said Notrebe would, on payment of said purchase-money, make to him a good and sufficient conveyance in fee simple, with general warranty of all of said lands, and that the defendant, Mary Felicia, would relinquish her dower in the same. And your orator executed to said Notrebe and wife his bond, conditioned that in the event said Notrebe and wife should acquire a good title to the undivided half of said two last mentioned quarter sections, belonging to the heir of said Cummins, at any time before they should execute the conveyance aforesaid to your orator, and convey the same to your orator in accordance with their bond, then he would pay the said sixteen hundred and eighty dollars; but if said Notrebe and wife failed to convey said undivided half of said two quarter sections to your orator, in conformity with their bond, then your orator's said obligation was to be a defeasance and discharge of so much of the covenant of said Frederic and wife in said title bond as relates to the one undivided half of said quarter sections, and said obligation should be void as respected the payment of the said sum of sixteen hundred and eighty dollars. All which will more fully and at large appear from copies of the said bonds herewith filed and to be

taken as part hereof, marked Exhibits No. 3 and 4, the originals being held by your orator subject to the order of the court and inspection of the parties, the same being in the handwriting of the defendant, Farrelly.

That, having thus completed his contract for the purchase of said lands, your orator some days afterwards repaired to the office of the Register or Recorder of Chicot County to have the said title bond of Notrebe and wife registered, and then for the first time saw on the books of the Register the mortgage, a copy of which is herewith filed as part of this bill, marked Exhibit No. 5, the original not being in your orator's custody or control. Although he did not then, as he does not yet, understand the exact legal effect of said mortgage, yet he could not fail to see, first, that said Notrebe was not the sole owner of said lands, as he and said defendant Farrelly had represented the fact to be, except as to the two undivided quarter sections last specified in the list above set forth, but was in fact joint owner or tenant in common with the deceased William Cummins of the whole, and that said Cummins's interest had descended to the defendant, Mary Morton; and, secondly, that all of said lands, except said two quarter sections, were incumbered by a debt of thirty thousand dollars, for so much stock in the Real Estate Bank of the State of Arkansas, subscribed for by said Notrebe and Cummins, to secure which they had executed to said bank their bond for thirty thousand dollars, payable on the 26th of October, 1861, with annual interest at the rate of five per cent.; and, thirdly, that said mortgage had been executed to secure the payment of the said thirty thousand dollars and interest, and also to secure the payment of any money that said bank might lend to said Notrebe and Cummins, or that they might receive from said bank on account of subscription to its stock.

That your orator saw these things with surprise and alarm; surprise, that Notrebe should have made representations as to his title so utterly unsupported as it seemed to your orator, by the facts of the case; and alarm lest he had gone too far to retrace his steps, or lest it might be impossible to obtain indemnity against an incumbrance which seemed not to be within the power of Notrebe to remove. Upon inquiry and conversation among the people, he found there was a kind of public opinion prevalent in the State of Arkansas, according to which these stock bonds and mortgages executed to the Real Estate Bank were lightly esteemed. And this public opinion or sentiment, coupled with Notrebe's reputation for honor and honesty, and Farrelly's good character and knowledge of Arkansas affairs, in some degree quieted your orator's apprehensions of bad consequences, though his judgment was never convinced that these bonds and mortgages were not real and formidable incumbrances. Moreover, your orator was pleased with the land, and was desirous of retaining it, and had paid out seven thousand dollars in the purchase of it, too large a sum to be permitted to remain idle; and under the influence of these motives he decided to bring his slaves

from Tennessee, and settle them on the place, which he accordingly did in the year 1846; since which time he has cleared about six hundred acres of the land, and erected on it a gin, mill, negro houses, and other valuable and costly improvements; and he has become so accustomed and attached to the place, and his affairs are now so situated as that it would be to the last degree injurious to him to be compelled to abandon his bargain, even with full compensation for his improvements, which have greatly enhanced the value of the land.

That said Notrebe, soon after the sale to your orator, sold and indorsed to A. L. Shotwell, of Louisville, Kentucky, two of your orator's notes, namely, those which would fall due on the first of April, 1847, and first of April, 1848, each for twenty-two hundred and seventy-nine dollars; and said Shotwell, shortly after said first note fell due, applied to your orator for payment thereof; but your orator had now been notified, that a bill was filed in the Chicot Circuit Court against your orator, and Ebenezer Cummins, administrator of William Cummins, deceased, Mary Cummins, Terrence Farrelly, and Frederick Notrebe, by George C. Brenneman, a creditor of said William Cummins, the design of which was to make all of said lands, except the said undivided half of the northeast quarter Section 21, and the northwest quarter of Section 22, liable to said Brenneman's demand against said Cummins. In consequence of this, your orator at once resolved to pay no more of the purchase-money until he could be better satisfied of Notrebe's ability to make a good title to the land; and in this frame of mind he attended Chicot Circuit Court to answer Brenneman's bill, where he found Shotwell, to whom he immediately communicated his resolution. But before your orator had prepared his answer to Brenneman's bill, Notrebe, or Farrelly for him, settled the demand by paying Brenneman thirty-five hundred dollars, and then Shotwell insisted that your orator should pay him; upon this, your orator applied for advice to an eminent member of the bar, then present at Court, who was of opinion, and advised that, under the circumstances, your orator was bound to pay the purchase-money as it fell due, and your orator accordingly promised Shotwell to pay him as soon as he could collect his means.

That, in the mean time, the Real Estate Bank, or its trustees, had foreclosed their aforesaid mortgage, as your orator was informed, so far as it was given for money borrowed by, and advanced to said Notrebe and Cummins, as stockholders therein, and obtained a decree of the Chicot Circuit Court for a sale of said lands; and at said sale, which was made by Johnson Chapman, Commissioner, the said Notrebe became the purchaser thereof, and a deed was made to him by said commissioner, which was duly recorded in said county, as by a certified copy thereof, marked Exhibit No. 6, and to be taken as part hereof, will more fully and at large appear, the original not being in the possession, or subject to the control, of your orator.

That your orator received a letter from said Notrebe, dated 8th August, 1848, written in answer to one he had addressed to him, in which said Notrebe stated that he had been compelled to pay the amount of the Bank mortgage, as aforesaid, for the sum of twelve thousand dollars, and also to pay three thousand five hundred dollars in addition to clear the title, and that at that time there was no doubt or difficulty about the title, and that he was, in fact, the "sole owner" of the several tracts of land sold by him to your orator as aforesaid, except said two quarter sections, and was ready to give your orator a good conveyance in fee simple, on final payment; and urged your orator to pay off or give him a draft for the amount of the note, which still remained in his possession, and which would fall due on the first of April, 1849. And as to the two quarter sections, the undivided halves of which belonged to the estate of William Cummins, he stated in said letter, that he had purchased an old judgment against the estate, and had had an execution issued thereon, and levied upon the interest of said Cummins in said land, which interest would be sold in due time, and he would purchase it, and that then his title would be complete; all of which will more fully and at large appear by a copy of said letter, herewith filed and to be taken as part hereof, marked Exhibit No. 7, the original being held by your orator subject to the order of the Court, and the inspection of the parties. And your orator is advised, that a sale has since in fact taken place of the interest of said Cummins in said land, and the same was purchased either by said Notrebe or by said Farrelly, as his executor; but your orator is not advised, whether said sale was regular and legal, or otherwise, so as to divest the title of the defendants, Mary Norton and her husband, to whom the said land descended on the death of her father.

That it was by virtue of said sales under said decree and judgment, that said Notrebe wrote to your orator as aforesaid, that he was the sole owner of said lands, and was enabled to convey them in fee to your orator; cannot say whether he has them by a good title or not; nor has he any knowledge, in fact, of the state and condition of his title to said lands before the mortgage to the Real Estate Bank, and before the judgments by which they were encumbered; and information on this point can alone be had from the defendants, his heirs, and representatives.

That from the moment of discovering that the land was subject to said stock bond and mortgage, which Notrebe had concealed from, or, at least, not disclosed to him, your orator has felt unwilling to pay any more of said purchase-money without an indemnity against said bond and mortgage, both of which said Notrebe continued to treat to the last, not only as though they were no incumbrance, but as though they did not exist, claiming, notwithstanding said bond and mortgage, to be owner of the land, and able to convey it in fee, when, in fact, the fee is and was in the Real Estate Bank. Your

orator cannot aver, that Notrebe intended to deceive and defraud him, by representing the land to be subject to no other incumbrance except the mortgage for money lent him and Cummins by the Real Estate Bank, but the consequence of the concealment of the existence of the stock bond and mortgage for the payment of that and the accruing interest, is the same to your orator as if it had been intentionally concealed. He is advised this was a fact, which he had a right in law and equity to know, and which Notrebe was bound in conscience to disclose, and your orator feels certain that the knowledge of it before making the cash payment and the other acts aforesaid, consummating his contract, would have materially influenced his conduct in the premises, and, in fact, determined him against it, in his then indistinct knowledge of Arkansas affairs. And, although he is now much better informed, and has grown somewhat familiar with the stock bond and mortgages to the Real Estate Bank, still his familiarity has not reconciled him to them, and he feels unfeigned astonishment at the indifference of the community to this class of incumbrances upon their lands, and is so well satisfied, or at least so much apprehends, that they are something more than a mere unsubstantial shadow, that he is resolved to have the opinion of this Honorable Court upon the point, if he can, as he trusts he may legally entitle himself to the same. That in February or March, 1849, said Frederic Notrebe departed this life, after making his last will and testament, by which he left the said Refel, Thetford, and Farrelly, his executors, who have qualified and taken upon themselves the execution of said will. And the said Frederic left surviving him and entitled to his estate at law, his widow, the said Mary Felicia and his granddaughter, the said Mary Morton, daughter of the said William Cummins.

That, on the 30th of October, 1849, after his qualification, the defendant, Farrelly, addressed your orator a letter, herewith filed, and to be taken as part hereof, marked Exhibit No. 8, in which he notified your orator that his last note of 2279 dollars had fallen due; and also that as they were now able to give a clear title to the interest of William Cummins in the northeast quarter of Section 21, and northwest quarter of Section 22 aforesaid, there was further due to make up the full consideration of your orator's purchase the said sum of sixteen hundred and eighty dollars, which latter sum, he said, would bear interest from the date of his letter, they being then ready to make title, and urging your orator to pay said sums at the earliest day; and, on doing so, promising to execute a deed in strict conformity with the title bond held by your orator.

That your orator has never seen Notrebe's will, and is therefore not informed whether or not it contains authority to his executors to make a deed to your orator in conformity to the bond; but if it does, he is as much as ever at a loss, notwithstanding the assertion of the defendant Farrelly, to understand how the executors can make a

conveyance of the fee to your orator, seeing that their testator had, in his lifetime, conveyed the fee to the Real Estate Bank, in which, or its trustees, it still resides; your orator supposes it does not admit of doubt, but that whatever the legal effect of that conveyance to the Bank may be, yet, according to the forms of the law at least, the legal title to the land, except of the two quarter sections in which Cummins was interested, is in the Bank or its trustees, and can never be had out of them but by a payment of the bond for stock, or some other satisfaction of the same, or cancellation thereof by the legislature, if that be possible, or by a bill to redeem or foreclose the mortgage, or by some other bill in equity, and decree thereon, pronouncing the said mortgage a nullity, if that be so, and thereupon divesting the title out of the Real Estate Bank, or its trustees, and vesting it in your orator. And if there is no authority in Notrebe's will for his executors to convey to your orator such title as he had, *that*, whatever it may be, has descended to his heir-at-law, the defendant, Mary Morton and her husband, and she being an infant and a married woman, there is no means of getting a divestiture of her title but by the aid of a court of equity; and the same may be the law as to the two quarter sections, of which her father was joint owner with said Notrebe, since the proceedings, by which Notrebe purported to become owner of her father's undivided interest, may be and probably are void or voidable; and, whether they be so or not, the legal title is in her as heir-at-law also of her grandfather. And so your orator cannot possibly obtain a title to said lands but with the aid of this honorable Court, or some other Court of equity; your orator has nevertheless paid the balance of the purchase-money, and now comes into this Court for its aid in the premises.

To the end, therefore, that the said Lewis S. Refel, A. B. K. Thetford, and Terrence Farrelly, as executors of the said Frederic Notrebe, Mary Felicia Notrebe, widow of said Frederic, Edward Morton and Mary his wife, who is an infant under the age of twenty-one years, and is sole heir both of said Frederic Notrebe and of said William Cummins, and said Faulkner, Drennen, Biscoe, Chase, and Walker, residuary trustees as aforesaid, may be made parties to this bill, and may be compelled to answer the same and such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer: that is to say,—

1. Whether the said Frederic Notrebe and William Cummins were not, and by what means and titles, joint owners of the whole of the lands purchased by your orator from said Notrebe, as set forth in this bill? In answer to which interrogatory let said executors and heir of Notrebe set forth the muniments of title by which he and said Cummins held said lands?

2. Whether said Notrebe and Cummins did not subscribe for thirty thousand dollars of the stock of the Real Estate Bank of the State of Arkansas?

3. Whether they did not execute their bond, and when, to said Bank, for thirty thousand dollars of stock, payable on the 26th of October, 1861, with interest thereon at the rate of five per cent.?

4. Whether to secure the payment of said bond, and the payment of such sums of money as the Bank might lend them, and they might receive from said Bank as stockholders, they did not execute a mortgage of the said lands, or some of them, and which in particular, and whether the copy thereof filed with this bill, as Exhibit No. 5, is not a true copy thereof, and if not, let them set forth a true copy thereof, or file the original?

5. Whether the said Real Estate Bank or its Trustees did not, and when, and for a breach of which condition of said mortgage, foreclose the same, and sell the land, and to whom, and for what price, and upon such sale, make a conveyance of the same to the purchaser? and let them set forth a copy of said conveyance, or file the original.

6. Whether said mortgage is deemed to be still a subsisting security for any part of the debt of the said Notrebe and Cummins to said Bank, and what part in particular?

7. Whether the said Notrebe had any title, and what in particular to the northeast quarter of section 21 and northwest quarter of section 22 in this bill mentioned at the time of the sale to your orator, or at any subsequent time, and when, and what the nature of his title was, or is, setting forth the title papers, whereby he claims the same?

8. Whether the said Notrebe did not sell the said land to your orator, and upon what terms, and in what state of the proceedings of the said Bank against him and Cummins on the said mortgage.

9. Whether he did not represent himself as sole owner of the whole of said lands, except the two quarter sections mentioned in the 7th interrogatory, and able to convey the same in fee to your orator, after payment of an incumbrance of about 12,000 dollars for money lent him and Cummins by the Real Estate Bank?

10. Whether the said Farrelly did not assure your orator, on being questioned by your orator aside from Notrebe, that said Notrebe's representations as to his title as set forth in this bill were true?

11. Whether the said Notrebe and Farrelly did not then know that the said land, except said two quarter sections, were mortgaged to said Real Estate Bank, for thirty thousand dollars of the stock of said Bank, for which said Notrebe and Cummins had subscribed, and for which the Bank held their bond?

12. Whether the said mortgage was once mentioned to your orator by either of them?

13. Whether the several letters of the said Notrebe and Farrelly, alleged in this bill to have been addressed to your orator, and made exhibits hereto, are not genuine, and the contents thereof truly stated?

14. Whether the said Notrebe did not depart this life some time, and at what time, in 1849, leaving a Will, and appointing Executors, and whom, and who are his widow and heir or heirs at law?

15. Whether your orator has not paid up the whole of said purchase-money?

16. Whether said Executors have any and what authority to make your orator a title to said land or any of it, and what title their testator had at the time of his death, exhibiting papers and muniments of title?

And to the end further, that the title of the said Frederic may be referred to the Clerk of this honorable Court, or to some proper commissioner, with instructions to report thereon, setting forth the muniments thereof; and if it be found that such a title, as, in equity and conscience, said Notrebe ought to make to your orator, and he ought to be compelled to take, is vested either in the said executors, or the heir or heirs of said Frederic, that the same may be divested out of them and vested in your orator; that if the fee of said land is not vested in the said heir or heirs, and the executors have no power to convey the same, but the same is outstanding in the Real Estate Bank, or its Trustees or elsewhere, that the same, if those in whom it is vested are not equitably entitled to hold it against your orator, may be divested out of such person or persons, and be vested in your orator. But if the fee is, in point of law and equity, in the said Real Estate Bank or its trustees, then that the said executors and heir or heirs of the said Notrebe, may be compelled to satisfy and extinguish the claim of the said Real Estate Bank or its trustees, if that be possible at this time; and if not, that the said heir or heirs and said executors, may be compelled to indemnify your orator against the demand of the said Bank or its trustees, in such manner as may be at once the most effectual for your orator, and the most convenient for the said representatives, real and personal, of the said Notrebe, either by giving your orator a bond with sufficient personal or real security, conditioned so as to secure him against said demand, or in such other way as this Court may order; and till that is done, that the said executors may be enjoined from distributing the personal estate of the said Notrebe, in their hands to be administered; and the said heir or heirs of said Notrebe, prohibited from receiving the same; and that your orator may have such other relief as the nature of his case require and be consistent with equity.

May it please your Honors to grant your orator the writs of subpœna ad respondendum and injunction, issuing, &c., directed, &c., commanding, &c.; and, as in duty bound, your orator will ever pray, &c.

WM. W. WOODFOLK.

NOTE.—All the defendants are required to answer the first six of the foregoing interrogatories.

The defendants Refel, Thetford, and Farrelly, Mary Felicia Notrebe, Edward Morton, and Mary, his wife, are required to answer the interrogatories respectively numbered 7 and 8.

And the said defendants, Refel, Thetford, and Farrelly, the interrogatories numbered from 9 to 16 inclusive.

State of Tennessee, Davidson County, City of Nashville.

On the 26th day of July, 1851, before me, Egbert A. Raworth, a Commissioner for the State of Arkansas, duly appointed and commissioned by the Governor thereof, for the State of Tennessee, "To take the proof and acknowledgment of deeds, depositions, affidavits, and other instruments of writing under seal, to be used or recorded in said State," personally appeared, W. W. Woodfolk, who being duly sworn according to law, declares and says, that the facts stated in the foregoing bill, as of his own knowledge, are true, and those derived from the information of others he believes to be true.

WM. W. WOODFOLK.

Subscribed and sworn to before me, at Nashville, this 26th day of July, 1851. In testimony whereof, I have hereunto subscribed my name and affixed my official seal. [L. S.]

EGBERT A. RAWORTH,
Commissioner for Arkansas.

I acknowledge myself security for all the costs for which the complainant may be liable in the within suit.

F. W. TRAPNALL.

Filed September 23d, A.D. 1851, and summons issued.

WM. FIELD,
Clerk.

United States of America; Eastern District of Arkansas.

The President of the United States to the Marshal of the Eastern District of Arkansas, Greeting: [SEAL.]

You are hereby commanded to summon Lewis S. Refeld, A. B. K. Thetford, and Terrence Farrelly, executors of Frederic Notrebe, deceased, Mary Felicia Notrebe, Edward C. Morton, and Mary his wife, Sandford C. Faulkner, John Drennen, Henry S. Biscoe, Luther Chase, and James H. Walker, if they be found within your bailiwick, to appear before the Judges of our Circuit Court of the United States, in and for the District of Arkansas, at the Court-house in the City of Little Rock, sitting on the Chancery side of said Court, on the first Monday of January next (A. D. 1852), to answer William W. Woodfolk, to a bill of complaint filed and exhibited against them, and have you then and there this writ.

In testimony whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court, has caused the seal of the said Circuit Court to be hereunto affixed, this 23d day of September, A. D. 1851, and in the 76th year of our independence.

WM. FIELD,
Clerk.

Mem.—The defendants to enter their appearance in this suit in the Clerk's Office on or before the day at which this writ is returnable; otherwise, the bill may be taken *pro confesso*.

WM. FIELD,
Clerk.

I certify, that I executed the within writ on the within named Henry S. Biscoe, of Helena, Ark., by reading to him the contents thereof in his presence and hearing, and delivering to him a true copy thereof on the 19th day of November, 1851; and on the within named James H. Walker, of Hempstead County, Ark., by informing him of the contents thereof, and delivering to him a true copy thereof, on the 26th day of November, 1851; and on S. C. Faulkner, by delivering to him a true copy thereof, on the 2d day of December, 1851, at Little Rock, Ark.; and on Terrence Farrelly, A. B. K. Thetford, and S. S. Refeld, by informing them of the contents thereof, and delivering to each of them a true copy thereof; and on Edward C. Morton and Mary his wife, and on Mary F. Notrebe, by informing each of them of the contents thereof, and delivering to each a true copy thereof at their residences in Arkansas County, on the 9th day of November, 1851.

LUTHER CHASE,
U. S. Marshal.

County of Sebastian; Eastern District Arkansas.

I certify that I executed the within writ on John Drennen, Trustee, by informing him of the contents thereof, and delivering to him a true copy thereof the 23d October, 1851.

LUTHER CHASE,
U. S. Marshal.
By JOHN GARDNER,
Deputy Marshal.

Fees.

Serving on 11 persons, at $2,	$22 00
11 copies, at 50 cents, . .	5 50
Travelling 900 miles, 5, . .	45 00
Return, ...	1 00
	$173 50

Returned and filed, 26th December, 1851.
Attest, WM. FIELD,
Clerk.

Exhibit No. 1.

Post of Arkansas, April 7th, 1845.

General W. W. Woodfolk, Nashville.

Dear Sir: I received a letter from Dr. John Waters, of your city, informing me that you wish to purchase some lands in Arkansas,

bordering on or near the Mississippi River. I am the owner of two *separate* tracts already under some improvements, which are as follows:—1st. 1284 acres, free of the inundation of 1844, situate in Jefferson County (not far from Dr. Waters') with gin, negro houses, and 175 acres in fine cultivation of cotton, by my tenant, Mr. J. B. Hall, of Tennessee, who will make another crop of 1845; that tract of land had 2½ feet bank in the last and extraordinary freshet, and every foot of it *tinable.*

I will give warrantee deeds for $15,000; say $5000 cash down, the balance at 12, 24, and 36 months, with 6 per cent. per annum interest, giving my bond for $3000 that I shall give a deed in fee simple after final payment.

2d. Another tract of 1371, free of the flood of 1828 and 1844, and situate on the Mississippi River, near the line of Louisiana, in Chicot County, having about one half mile front on the river, and 40 acres land well cleared, and perhaps 100 acres more badly cleared, with a double log house on it. I had a tenant for three years, paying 20 cents for every cord of wood sold to steamboats. I will give immediate possession and warrantee deed, after final payment of $16,000, say $5000 cash down, and the balance at 12, 24, and 36 months, with 6 per cent. interest per annum. That tract of land is among the best in Chicot, and the bank is well secured by the foot of an island, so no caving bank by current, wind, or waves of steamboats. Should you desire to become owner of one of those beautiful plantations, please visit them, and give me an answer. Dr. John Waters will tell you what kind of man I am, born a French, and punctual to my engagements.

Yours, respectfully,
F. NOTREBE.

P.S.—I own a tract of 362 acres on Old River, near the Mississippi, in Chicot County, without improvements, for which I will take $2700, one-third down, and the balance at 12, 24, and 36 months. Also an undivided tract of 1920 acres on Bayou Masson, in Chicot County, say 960 acres, for which I will take $4800, one-fourth down, and the balance at 12, 24, and 36 months. I own also several large tracts of lands on the River Arkansas, to be sold by half or full sections, or more, for $3½ per acre, cash down; if sold in lump of 5000 acres at $3 per acre, at one-fourth down, and the balance in 12, 24, and 36 months.

Y'rs, F. N.

I forgot to tell you that Dr. James Clark is now residing on the premises of my Chicot place; if you visit the lands, address yourself to him; he is a perfect gentleman.

F. N.

"*Exhibit No.* 2."

POST OF ARKANSAS, May 19, 1845.

General Wm. W. Woodfolk, Nashville, Tennessee.

My dear Sir: Your esteemed of 2d inst. reached me on the 12th duly. According to your wishes, I enclose you a small partial of a plat of the township where my lands *lies* in Chicot County, near the line of Louisiana. In my letter of 7th ult., I mentioned to you the tract to be 1371 acres; it was a mistake on my part, as 53 acres, adjoining Rev. Bolls, is detached from it, and the tract for sale is only 1318 acres, as you will perceive by the plat, to wit:

3 quarters and half quarter in Sec. 21, .	360
1 do. do. do. Sec. 22, .	240
To the landing, 1 fractional quarter on Sec. 27,	$38\frac{48}{100}$
3 quarters in Sec. 28, ...	480
	$1318\frac{84}{100}$ acres.

Mr. Wm. R. Applegate, brother-in-law of Dr. Jas. Clarke, has been on my land for three years, cutting wood on the southwest quarter of Sec. 22, with the view of clearing the same, and that it is all the wood intended *intended* to be cut on my land (by contract). Mr. Applegate told me repeatedly that my whole tract was free from the overflow of 1844 by 16 inches bank to 2 feet back; but the best judge is the water-mark on the trees, and no doubt that the lands overflowed, as reported to you by some person, belong to some of my neighbors. As regards the two small bayous or runs passing through the tract, it is an embellishment to the lands, as they receive the rain water, and keep the plantation always dry. Dr. Jas. Clarke wrote me that a small caving took place this year, for the first time, *opposite* the garden, and God knows if it shall continue. But as the front of the tract is only a fraction of $38\frac{84}{100}$ acres for the landing, the main body of the land cannot be injured in future. As you are desirous to purchase that fine tract of 1318 acres, and I to trade with you, my lowest price will be ten dollars per acre cash down, or ten dollars and fifty cents per acre, half down, and half in three equal payments of one, two, and three years, with interest. Should you become purchaser of my tract of 1318 acres, I will endeavor, if it suit you, to purchase for your benefit the balance, being 160 acres, of the two quarters northwest and northeast of Sec. 21 and 22, which undivided lands belonging to the state of my son-in-law, as such land cannot suit any person except the owner of the large tract. I hope that you will soon be in better health and able to revisit these lands, and to appreciate their full value. Please to answer as soon as possible, and oblige,

Yours, respectfully,

F. NOTREBE.

Exhibit No. 3.

Know all men by these presents, that I, William W. Woodfolk, of Nashville, in the State of Tennessee, are held and firmly bound unto Frederick Notrebe and Mary Notrebe his wife, in the penal sum of three thousand three hundred and sixty dollars lawful money of the United States, for the payment of which sum, well and truly to be made, I hereby bind myself, my heirs, executors, and administrators, firmly by these presents. Witness my hand and seal this 22d day of October, 1845.

The condition of the above obligation is such, that whereas the above bounden hath this day purchased of the said Frederic and wife several tracts or parcels of land on the Mississippi River, in Township 19 south, of Range 1 east, particularly described and designated in a bond for title, bearing date with these presents, executed by the said Notrebe and wife to the above-bounden, in which are included the northeast quarter of Section 21 and the northwest quarter of Section 22, in said township and range; and it is well understood between the above-bounden and the said Fredecri and wife, that the said Frederic and wife own only one undivided half of the said two quarter sections; but in the event of the said Frederic and wife should acquire a good title to the other undivided half of said two quarter sections of land at any time before they shall execute a deed of conveyance for the lands sold to the above-bounden, and for which said title bond has been given, the said Frederic and wife are to convey the whole of said two quarter sections in accordance with their covenants in said title bond, on payment of the consideration of sixteen hundred and eighty dollars by the said above-bounden, his heirs, or assigns, but in the event of the said Frederic and wife's failure to convey the undivided half of said two quarter sections to the above-bounden in conformity with their covenants in said title bond, then and in that case this obligation shall be in full and complete defeasance and discharge of so much of the covenants of the said Frederic and wife in the said title bond as relates to the one undivided half of the said two quarter sections of land; and this obligation shall be void as respects the payment of the said sum of sixteen hundred and eighty dollars, otherwise to remain in full force and virtue.

WM. W. WOODFOLK. [SEAL.]

Witness: T. FARRELLY.

Received, March 19th, 1850, of General W. W. Woodfolk, the sum of sixteen hundred and eighty dollars in acquittance and in full discharge of the foregoing bond.

$1680. T. FARRELLY,

Executor of the last Will and Testament of F. Notrebe, dec'd.

"*Exhibit No. 7.*"

F. NOTREBE'S PLANTATION, ARKS. CO.,
August 8th, 1848.

General W. W. Woodfolk.

Dear Sir: Your esteemed of 25th ult. has been duly received by last mail.

I suppose you have been apprised of all the trouble I have had about late William Cummins' undivided share or moiety of the lands I sold you in October, 1846, and for which you hold my bond. As soon as these lands were sold, I paid the Real Estate Bank $12,000, for said William Cummins's debt, secured by his half or moiety of these tracts with my personal security, and then I obtained a decree of the County Court of Chicot, to have said share of William Cummins sold at public sale. I became the purchaser (through Col. Farrelly, my agent) of that share of late Cummins, and I was prepared to give you a good deed on final payment, as per our bond or contract, when, to my astonishment, said decree of the Chicot County Court was reversed by the Supreme Court at Little Rock, and said moiety of late Cummins's land became subject to previous claims or judgments in favor of old creditors unknown to me, and by a new decree from the same Chicot Court, under the appointment of Johnson Chapman, Esq. (Commissioner), the same lands (the moiety of late Cummins) were sold at public sale a second time, and I became again the purchaser for $3500 cash down, as it will appear on the records of Chicot County Court, Book F, pages 90, 91, 92, and 93.

Now, my dear sir, after paying twice large sums to relieve that moiety of late Cummins' lands from incumbrance, I am at last the sole owner of the several tracts sold to you in October, 1846, and am ready to give you a good conveyance in fee simple on final payment.

As you have been informed, I have sold to Mr. Shotwell two of your notes for Arkansas Bank notes at 50 cents, to help me paying Cummins' debts in the Real Estate Bank. The last of your three notes $2279 due 1st of April, 1849, is yet in my possession, and having borrowed the $3500 to pay down the second purchase of Wm. Cummins' moiety of the land sold to you, I need the payment of that last note in good par money, or a draft on New Orleans, where I am indebted for these $3500 handed to me by some good friends. I hope to receive your answer as soon as possible.

Yours, respectfully,
F. NOTREBE.

P. S. As regards the two acres in question, Colonel Farrelly, agent, purchased an old judgment against the estate of Wm. C——, had the levy made upon the land, and we expect a sale of it in the course of time. F. N.

2630

Exhibit No. 8.

COLUMBIA, ARKANSAS, October 30th, 1849.

William W. Woodfolk, Grand Lake, Ark's.

Dear Sir:—I am here attending Court and expected to have the pleasure of meeting you, having understood that you had passed down the river to your plantation. Your note to the late Mr. Notrebe became due on the first of April last, for the sum of two thousand two hundred and seventy-nine ($2279) dollars; and also, as we are now enabled to give a clear title to the interest of William Cummins, in northeast of section 21 and northwest of 22, there is further due, to make up the full consideration of your purchase from Mr. N., the further sum of sixteen hundred and eighty dollars in defeasance bond; this latter sum is to bear interest from this date, being now ready to make title. I consider the last sum due on notice of the fact communicated to you in this letter.

The whole amount due is as follows:

Note due 1st April, 1849, ...	$2279 00
Interest on same until paid on Bond of Defeasance,	1680 00
	$3959 00

In consequence of the failure of crop on Notrebe's plantation this year, the estate is greatly in need of money. I trust you will pay the above sum, with interest due, at the earliest day; and the deed will be executed in strict conformity with the title bond, which you now hold. In hopes of seeing or hearing from you at Arkansas Post shortly, I remain, very respt'ly, yours,

T. FARRELLY,
For himself and others, executors of the last will and testament of F. Notrebe, dec'd.

This deed of mortgage, executed and delivered this twenty-second day of July, in the year of Christ, eighteen hundred and thirty-seven, by and between Frederic Notrebe, of the County of Arkansas, and William Cummins, of the County of Pulaski, and State of Arkansas, of the first part, and the Real Estate Bank of the State of Arkansas, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the stock taken and allowed to the said parties of the first part, in the Bank aforesaid, and the benefits hereinafter stated, have this day granted, bargained, and sold, and by these presents do grant, bargain, sell, alien, transfer, and convey, to the said Real Estate Bank of the State of Arkansas, the party of the second part, the following described tracts or parcels of land, lying and situate in the County of Chicot, and State of Arkansas, and known and designated on the plats of the surveys of the public lands, as the northeast fractional quarter of fractional

section twenty-seven, containing thirty-eight $\frac{80}{100}$ acres. The southwest quarter of fractional section twenty-two. The southeast quarter of section twenty-one. The west half of section twenty-one. The northwest quarter of section twenty-eight. The east half of section twenty-eight, and the southwest fractional quarter of fractional section twenty-three, containing fifty-three acres. Containing in the whole, according to survey, twelve hundred and eleven $\frac{80}{100}$ acres of land. To have and to hold the said tracts of land, with all and singular the rights, improvements, buildings, ways, hereditaments, and appurtenances thereof or thereto, in any wise belonging or attached to the said Real Estate Bank of the State of Arkansas, or its assigns, forever. And the said parties of the first part, for themselves, their heirs and legal representatives, covenant to and with the said parties of the second part and its assigns, that they have good and sufficient title to the above-described land, with all and singular the appurtenances thereof; and that they, their heirs and legal representatives, will warrant and defend the title, possession, and enjoyment of said tract of land, with the appurtenances thereof aforesaid, to the said party of the second part, or its assigns, against the claim or claims or lawful demands of any and all persons whatsoever, and against their heirs or assigns forever. The above deed is made, however, on the following express and well-understood conditions. That whereas, the said parties of the first part have this day executed their bond, payable to the said Real Estate Bank of the State of Arkansas, for the sum of thirty thousand (30,000) dollars, lawful money of the United States, payable on the 26th day of October, in the year eighteen hundred and sixty-one, and drawing interest on said sum at the rate of five per cent. per annum; the said interest being paid half yearly until the principal falls due; the said bond having been executed for so much stock subscribed by the said parties of the first part, to and in the said Real Estate Bank of the State of Arkansas. Now if the said parties of the first part, their heirs, assigns, or legal representatives, shall well and truly pay, or cause to be paid, all moneys which said parties of the first part may receive from said Bank, on account of subscriptions for stock in said Bank, and the interest due on said moneys, according to the requisitions and regulations of said Bank; and if the parties of the first part, their heirs, or assigns, shall well and truly pay or cause to be paid to whom it may be due, so much or such sum of the bonds of the State of Arkansas, issued by said State in favor of the Bank aforesaid, and the interest on said bonds of the State, or such part thereof as shall be equal to the stock allowed and granted to them, the said parties of the first part, or to their heirs or assigns, and shall also well and truly pay, or cause to be paid, the said bond to the said Bank above recited and described, executed by the parties of the first, for stock in said Bank and the interest accruing thereon, according to the tenor and effect, true intent and meaning of said bond, then the above deed to be void,

and of no effect—otherwise to remain in full force and virtue. It is distinctly agreed and understood between the parties to this mortgage, that the said lands, tenements, and hereditaments, with all and singular their appurtenances aforesaid, are to be enjoyed by and remain in the possession and occupancy of the parties of the first part, until the same shall be legally sold to discharge and satisfy the above-recited obligation and liabilities. In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first above written.

[SEAL.] FREDERIC NOTREBE,
[SEAL.] WM. CUMMINS.

Executed in the presence of
H. J. McKENZIE,
CHAS. F. NOTREBE.

State of Arkansas, County of Arkansas.

This day, personally appeared before me, Benjamin S. Hallem, an acting Justice of the Peace in and for the County aforesaid, Frederic Notrebe and William Cummins, both to me well known, who severally acknowledge that they had executed the foregoing deed for the uses and purposes therein expressed. Given under my hand this 24th July, 1837.

[SEAL.] B. L. HALLEM,
Justice of the Peace.

I, James Blaine, Clerk of the Circuit and County Courts, and ex-officio Recorder within and for the County of Chicot and State of Arkansas, do hereby certify that the foregoing instrument of writing is a true copy from the original, filed in my office for record, and recorded this day by me, October the 23d, A.D. 1837.

JAMES BLAINE,
Clerk and ex-officio Recorder.

Chicot, Sct.

I, William J. Neale, Clerk of the Circuit Court and Ex-officio Recorder for said county, do hereby certify that the foregoing instrument of writing is truly copied from Record Book "C," pages 21, 22, and 23, in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, at office in Columbia, this 24th day of October, 1845.

W. J. NEALE,
Clerk.

Know all men by these presents, that we, Frederic Notrebe and Mary Feliciti his wife, of the County and State of Arkansas, are held and firmly bound unto William W. Woodfolk, in the penal sum of twenty-eight thousand dollars, lawful money of the United States, for the payment of which sum well and truly to be made we jointly

and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our hands and seals, this 22d day of October, 1845.

The condition of the above obligation is such, that whereas the above bounden hath this day sold to the said William W. Woodfolk, the following tracts or parcels of land lying and situate in the County of Chicot and State of Arkansas, and designated in the surveys of the lands of the United States as the northeast fractional quarter of section 27, the southeast quarter of section 28, the northeast quarter of section 28, the northwest quarter of section 28, the southwest quarter of section 22, the southeast quarter of section 21, the southwest quarter of section 21, the northwest quarter of section 21, the northeast quarter of section 21, and the northwest quarter of section 22, containing in the whole fourteen hundred and seventy-eight acres, and 84 one hundredths of an acre, on the west of the Mississippi River, in Township 19 south, of Range 1 west, bounded on the east by said river and the lands of Mr. Bolls, on the south by the lands of John J. Cowden, on the west by the lands of Peak and Shaw, and on the north by the 16th section or school section, for the sum and consideration of fifteen thousand five hundred and nineteen dollars, of which sum the said Frederic and wife acknowledge to have received at the date of these presents the sum of seven thousand dollars and sixty-six cents in cash, and hereby acknowledge the receipt thereof, and forever acquit the said William W. from the payment of the same, and for the residue the said Frederic and wife have received from the said William W. his three several notes under seal, bearing the same date with these presents, each for the sum of two thousand two hundred and seventy-nine dollars, payable in twelve, twenty-four, and thirty-six months from and *and* after the first day of April, 1846; and also the bond or obligation of the said William W. for the sum of sixteen hundred and eighty dollars, bearing date with these presents in defeasance with conditions thereto annexed, which several notes and bond, with the cash payment aforesaid, amounts to the full sum of the consideration before mentioned. Now if the above bounden Frederic and wife, on the full and complete payment of the said several sums of money in the said several notes and bond specified at the time they respectively become due, according to the tenor and effect of said notes and bond, shall by a good and sufficient deed with general warrantee of title and relinquishment of dower, duly executed according to law, convey the said before described tracts or parcels of land with their appurtenances to the said William W. Woodfolk, his heirs or assigns forever, then in that case this obligation to be null and void, otherwise to remain in full force and virtue. And it is further understood between the parties to these presents, that if the said William W., his heirs or assigns, shall pay or cause to be paid the said several sums of money or either of them before the notes become due and payable according to the

tenor and effect of said notes, the said Frederic and wife are to discount from the time such payment is made, on the said notes or on any or either of them that may be paid off before they become due and payable, at the rate of 8 per cent. per annum, to be computed from the time of such payment up to the time such note or notes become from the tenor of such note or notes due and payable. It is also understood, that if the said William W. shall fail to pay any or either of the notes above mentioned on the day they respectively become due, such failure to pay on the day shall not void the contract.

FREDERIC NOTREBE. [SEAL.]
MARY F. NOTREBE. [SEAL.]

Witnesses.
S. P. BLOCKER.
NICHOLAS JACOBS.

State of Arkansas, County of Arkansas, *ss.*

Personally came before me, an acting Justice of the Peace, duly commissioned and qualified in and for the county aforesaid, Frederic Notrebe and Mary Feliciti his wife, to me personally known as the persons whose names are signed to the foregoing bond or instrument of writing, and acknowledged the same as their act and deed for the consideration and purpose therein mentioned and set forth, she, the said Mary Feliciti, having by me been first examined separate and apart from her said husband, and the contents of said instrument of writing being made known and explained to her, acknowledged that she had executed the same of her own free voluntary will, without compulsion or the undue influence of her said husband, and did not wish to retract, and that she voluntarily relinquished her dower interest therein to the lands and tenements mentioned, and would join in a deed of conveyance for the purpose on payment of the notes mentioned.

In witness whereof I have hereunto set my hand as Justice of the Peace this 22d day of October, 1845.

NICHOLAS JACOBS,
Justice of the Peace.

State of Arkansas, County of Chicot, *ss.*

I, William J. Neal, Clerk of the Circuit Court, and ex-officio Recorder for the County aforesaid, do hereby certify, that the annexed and foregoing instrument of writing was filed for record in my office on the 23d day of October, A. D. 1845, and the same is now duly recorded in Record Book E, pages 298, 299, and 300.

In testimony whereof, I have set my hand and affixed the seal of my office, at Columbia, the 29th day of October, in the year of our

Lord one thousand eight hundred and forty-five, and of the Independence of the United States the seventieth.

W. I. NEALE,
Clerk and Ex-Officio Recorder.

Filed 23d September, A. D. 1851.

WM. FIELD.

Exhibit No. 6. Commissioner's Deed.

Whereas, at the November Term of the Circuit Court of the County of Chicot, in the State of Arkansas, on the 13th day of November, A. D. 1847, in a certain suit there pending in said Court in Chancery, wherein George C. Breneman was complainant, and Ebenezer Cummins, as administrator of the estate of William Cummins, deceased, Mary Cummins, infant daughter and sole heir of said William Cummins, Frederic Notrebe, Terrence Farrelly, and William W. Woodfolk, were defendants, it was by the Court aforesaid ascertained, adjudged, and determined, that said complainant, as assignee of George Bringard, on the 19th day of April, A. D. 1842, by the consideration and judgment of the Circuit Court of the United States for the District of Arkansas, recovered against William K. English and Thomas H. Johnson, who were partners under the firm of English and Johnson, and Lorenzo Gibson and William Cummins, the sum of seven thousand six hundred dollars and twenty-four cents, for damages, also all his costs, &c., in that suit expended, that said plaintiff prosecuted out of said Court, on said judgment, a writ of fieri facias, on the 7th day of February, 1843, directed to the Marshal of the United States for said District of Arkansas; that said Marshal, under and by virtue and in execution thereof, and before return day thereof, levied said fi. fa. among other lands on the following lands, as the property of said William Cummins, to wit: The undivided half or moiety of the following described tracts of land, to wit: The northeast fractional quarter of frl. section twenty-seven (27); the southwest quarter of frl. section twenty-two (22); the west half and northeast quarter of section twenty-one (21); the east half and northwest quarter of section twenty-eight (28); and the southwest frl. quarter of frl. section three (23); all in Township nineteen (19) south, of Range one west, of the fifth principal meridian, and situate in said County of Chicot; that said lands were not sold under fieri facias, nor said damages and costs, or any part of either, made; that said William Cummins departed this life some in the month of April, A. D. 1843; that said Ebenezer is the administrator of the estate of said William Cummins, deceased; that said Mary Cummins is only daughter and sole heir of said William Cummins, an infant under age of twenty-one years; that on the 20th day of April, A. D. 1844, the said judgment, so recovered by said complainant in said Circuit Court of the United States for the District of Arkansas, was, by the consideration and judgment of said Court,

revived against said Ebenezer as administrator of the said William, deceased, and against said Inglish and Gibson; that the general and specific lien of said complainant, under and by virtue of said judgment, and the levy by said Marshal of said fi. fa., the remainder still continue unexecuted and unimpaired, that said damages and costs, so recovered by said plaintiff in said Circuit Court of the United States against said Inglish and Johnson, Gibson, and said William Cummins, and so revived against said administrator, as aforesaid, and said other defendants therein, except said Johnson, and all and every part of said damages and costs except the sum of eight hundred dollars, by said plaintiff remitted in said Court, on the 4th day of May, 1842, and the said sum of one hundred and fifty dollars, collected by said Marshal on said writ of Ven. Ex. prosecuted out of said Court, on said judgment, collected on the 20th day of November, A. D. 1843, still remains wholly unpaid and unsatisfied; that the said sale by said Marshal under said writ of Ven. Ex. was wholly void and of no effect; that the said sale by said Commissioner under the said decree, in this Court, at which said Farrelly became and was the purchaser of said lands as the agent of said Notrebe, is wholly void, annulled, and vacated by the judgments of said Supreme Court in said cause; that said complainant is entitled to have his and said general and specific lien on said lands, under and by virtue of said judgment in said Circuit Court of the United States for the District of Arkansas, and the levy by said Marshal of said fi. fa. issued on said judgment as aforesaid, enforced; wherefore it was by the said Circuit Court of Chicot County, in Chancery, ordered, adjudged, and decreed, that unless the said defendants, or one of them, do pay to said complainant on or before the first day of March next, A. D. 1848, the said damages, less the said sum of eight hundred dollars, so by said plaintiff in said judgment remitted, together with interest thereon from the rendition of said judgment as aforesaid, and also all his costs therein except the said sum of one hundred and fifty dollars, so collected by said Marshal on said Ven. Ex. as aforesaid, that then and in default thereof the said lands be sold at public auction to the highest bidder for cash, on the fourth day of the next term thereafter of the said Court, between the hours prescribed by law for judicial sales, at the court-house door of the County of Chicot, by Johnson Chapman, Esquire, who was thereby appointed a Commissioner to make said sale. It was thereby also further ordered, adjudged, and decreed, that said Commissioner give notice of said sale by one advertisement put up at the court-house of the said County *County* of Chicot, at least thirty days preceding said sale, and that out of the proceeds of said sale he pay first the expenses thereof, and the costs of said suit, and that he pay the residue of said judgment, and the residue, if any, he bring into Court with his report.

And whereas, the said Johnson Chapman, as such Commissioner did give more than thirty days' notice of said sale, in compliance with

said decree, by putting up one advertisement at the court-house door of said County.

And whereas, the whole amount adjudged by said decree, still remaining unpaid on said day of sale, in and said decree fixed and appointed, I, the said Johnson Chapman, as such Commissioner as aforesaid, did proceed, on the eleventh day of May, A.D. 1848, that being the fourth day of the next term of said Court, following said decree, and between the hours prescribed for judicial sales, to offer and expose the said undivided half or moiety of the hereinbefore described tracts or parcels of land for sale, at public auction, to the highest bidder, for cash, at the court-house door of said County of Chicot, in Columbia, in accordance with the mandate of said decree, at which sale, then and there so made, Frederic Notrebe bid and offered for said undivided half or moiety of the hereinbefore mentioned and described tracts or parcels of land, the sum of three thousand five hundred dollars, and that being the highest and last bid, the whole of said undivided half or moiety of said hereinbefore mentioned and described tracts *tracts* or parcels of land, were then and there by me, struck off to the said Frederic Notrebe, as the purchaser thereof.

Now, therefore, in consideration of the premises, and of said sum of three thousand dollars, to me, as such Commissioner, in hand paid by the said Frederic Notrebe, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, I, the said Johnson Chapman, as Commissioner as aforesaid, by virtue of the authority upon me conferred by the said decree, do hereby grant, bargain, sell, alien, transfer, confirm, and convey unto the said Notrebe, and his heirs, all and singular, the undivided half or moiety of the hereinbefore mentioned and described tracts or parcels of land, with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining.

To have and to hold said lands and tenements, with the hereditaments and appurtenances, unto the said Frederic Notrebe, and his heirs, forever.

In witness whereof, I, the said Johnson Chapman, Commissioner as aforesaid, do hereunto set my hand and affix my seal, this eleventh day of May, A.D. 1848.

Executed in presence, as witness:

(Signed) JOHNSON CHAPMAN, Commissioner. [SEAL.]

Chicot, *sct.* In the Chicot Circuit Court, May Term, May 12, 1848.

Be it remembered, that on this day, in open Court, before the Judge thereof, Johnson Chapman, who has executed the foregoing deed, as Commissioner heretofore appointed by the Court to make the sale in said deed set forth, and here, in open Court, acknowledged that he had voluntarily executed the annexed and foregoing deed, as

such Commissioner, for the uses, purposes, and considerations therein expressed, and desired the same to be certified, which is now here accordingly done.

In testimony whereof, I, Calvin Ashbrook, hereunto set my hand, as Clerk of said Circuit Court, and affixed [L. S.] the seal of said Court, this said 12th day of May, A.D. 1848.

(Signed) CALVIN ASHBROOK,
Clerk.
By JO. B. STEDMAN,
Deputy Clerk.

Filed for record, in my office, May 12th, 1848, and recorded May 25th, 1848. In the original, on the third page, between the fifth and sixth lines, the word "thereafter" is interlined; and between the twenty-fourth and twenty-fifth lines the words "first" is erased, and "next" interlined.

CALVIN ASHBROOK,
Clerk and Ex-officio Recorder for Chicot County.
By JO. B. STEDMAN,
Deputy Clerk.

State of Arkansas, County of Chicot.

I, Samuel W. Cooper, Clerk of the Circuit Court, in and for the County of Chicot, and State aforesaid, do hereby certify that the foregoing deed from Johnson Chapman, as Commissioner, to Frederic Notrebe, is a true copy from Record Book F, pages 390, '91, '92, and 393, in my office.

In testimony whereof, I have hereunto set my hand and [L. S.] affixed the seal of my office, this 17th day of March, A.D. 1851.

SAMUEL W. COOPER,
Clerk.

Filed Sept. 23d, A.D. 1851.

WM. FIELD,
Clerk.

The United States of America, Eastern District of Arkansas, *sct.*

At Rules, in the Clerk's office of the United States Circuit Court for the District of Arkansas, on the Chancery side thereof, before the clerk of said Court, on Monday the 5th day of January, A.D. 1852, being the first Monday of said month, the following proceedings are had, to wit:

WILLIAM W. WOODFOLK, Complainant,
v.
LOUIS L. REFEL, A. B. K. THETFORD, and TERRANCE FARRELLY, as Executors of FREDERIC NOTRIBE, deceased, MARY FELICITE NOTRIBE, EDWARD MORTON and MARY, his wife, sole heirs of FREDERIC NOTRIBE, deceased, and SANDFORD C. FAULKNER, JOHN DRENNEN, HENRY L. BISCOE, LUTHER CHASE, and JAMES H. WALKER, residuary trustees of the Real Estate Bank, Defendants. } In Chancery.

This day came the said complainant by Tropnall and Tropnall, his solicitors, and also the said defendants by Pike & Cummins, their solicitors; and the said defendants, by their solicitors, enter their appearance in this cause; and on motion it is ordered, that they have time until the first Monday of February next to file their answer to the said complainant's bill.

Attest, WM. FIELD, Clerk.

And at Rules, on the 2d day of February, A.D. 1852, being the first Monday of said month, in the clerk's office of the Circuit Court of the United States, before the clerk of said Court, the following proceedings were had, to wit:

WILLIAM W. WOODFOLK, Complainant,
v.
LOUIS L. REFEL, A. B. K. THETFORD, and TERRENCE FARRELLY, as executors of FREDERICK NOTRIBE, deceased, et al., defendants. } In Chancery.

This day came the said parties, by their respective solicitors, and upon their motion, and by consent, it is ordered, that the said defendants have time until the first Monday in March next to file their answers in this cause.

Attest, WM. FIELD, Clerk.

And at Rules, on the 1st day of March, A.D. 1852, being the first Monday of said month, in the clerk's office of the Circuit Court of the United States, before the clerk of said Court, the following proceedings were had, to wit:

WILLIAM W. WOODFOLK, Complainant,
v.
LOUIS L. REFEL, A. B. K. THETFORD, and TERRENCE FARRELLY, as executors of F. NOTRIBE, deceased, et. al., defendants. } In Chancery.

This day came the said parties, by their respective solicitors, and

on motion, and by consent, it is ordered, that the defendants have time until the first Monday of April next to file their answers in this cause.

Attest, WM. FIELD,
Clerk.

Arkansas District, *sct.*

In the Circuit Court of United States, for the Eastern District.
In Chancery.

The joint and several answer of Edward C. Morton, and Mary F. his wife, to the bill of complaint herein filed against them, and Terrence Farrelly, and others, by William W. Woodfolk:

These respondents, now and at all times hereafter, reserving to themselves every benefit of exception and advantage to the manifold errors, mistakes, insufficiencies, and falsehoods in said bill of complaint contained, for answer thereunto, or to so much thereof as they are advised and believe it is material for them to answer unto, answering, say:

That it is true, that Terrence Farrelly, Lewis L. Refeld, and A. B. K. Thetford, are the executors of the last will and testament of Frederic Notrebe, deceased, who died in the spring of 1849, were duly appointed and qualified as such, and took upon themselves the burden of such executorship, at the time and in the manner in said bill alleged: That said Mary Feliciti Notrebe is the widow of said Frederic, him surviving; and said Mary F. Morton is the daughter and sole heir-at-law of William Cummins, deceased, and the granddaughter of said Frederic, deceased, and his sole heir-at-law, and with whom said Edward C. has intermarried; that, prior to his death, said Frederic made and published his last will and testament, in due form of law, whereby he devised and bequeathed to his wife, said Mary Feliciti, one half of his estate, and to his son, John B. Notrebe, and his said granddaughter the other half, except some small bequests to his mother-in-law, Elizabeth Billette, and some compensation to his executors; and upon the death of his wife provided, that her half of the estate should revert to his son and granddaughter. That his son, John B., died before his father, intestate, unmarried, and without lawful issue, by reason whereof, the entire estate vested under the will in the other legatees.

Respondents further state, that said Mary F. Notrebe, widow of said Frederic, has, since his death, relinquished her right, or attempted so to do, under said will, and now claims her dower right under the statutes of the State of Arkansas, and respondents suppose she is entitled to claim and receive her legacy under the will, or her dower under said statutes out of said estate, one or the other. That all the executors named in said will, except said Farrelly, Refeld, and Thetford, renounced, and refused to qualify or act in the premises, and no others ever in fact became or acted as executors, except those

above named. That said will was duly admitted to probate and probated in the Probate Court of Arkansas County, Arkansas, and letters testamentary duly issued thereon to said Refeld, Farrelly, and Thetford: a true and duly certified copy of which will, letters testamentary, and of the probate of said will, are to be filed with, and as part of the answer of said executors herein, marked Exhibit No. 3, and respondents crave leave to refer to the same as part of this their answer, and to have the same in every respect treated and considered as part hereof, in every respect as if herein literally copied. Respondents, further answering, say, that the two several letters referred to in said bill, of date 7th April, 1845, and 17th May, 1845, respectively, were written and signed by said Frederic Notrebe, deceased, and the copies thereof referred to in said bill as Exhibits No. 1 and No. 2, respectively, are true copies of the originals, with the exception of some mere verbal inaccuracies, not materially affecting the sense thereof, so far as they have observed; but, for greater certainty, they crave leave to refer to the originals when produced, and that these originals alone may be used as evidence.

They also admit that the defeasance, or bond, in said bill mentioned, therein marked Exhibit No. 3, and a copy whereof is therewith filed, with the receipt thereon of Terrence Farrelly, one of said executors, were executed by the parties, and for the purposes therein expressed, and are truly exhibited. They admit the letter of August 8, 1848, purporting to have been written by said Frederic Notrebe, a copy whereof is filed with said bill, marked Exhibit No. 7, was written by said Frederic as alleged in said bill, and is correctly exhibited. As they do also admit the genuineness of the letter of Terrence Farrelly, one of said executors, of October 30th, 1849, a copy whereof is exhibited with said bill, marked Exhibit No. 8, and that the same is correctly.

They admit the deed, filed with said bill as Exhibit No. 4, is the deed executed by the said Frederic and his wife, at the time of the purchase of the lands therein mentioned, and that the same was duly acknowledged and recorded, as appears from the certificates thereto annexed, and that the same is correctly exhibited, as in said bill alleged.

Respondents have never seen the original of said pretended deed or mortgage to the Real Estate Bank of the State of Arkansas, a copy whereof is exhibited with said bill, marked Exhibit No. 5; but the same is in the usual form of such mortgages to said Bank, and they always understood that said Frederic and William had executed some such instrument, under the circumstances hereinafter mentioned, in favor of said Bank, and they suppose such Exhibit No. 5 is a substantially correct copy of the instrument so executed by them. The original of said instrument they believe is in the possession and under the control of the trustees of the said Real Estate Bank, and not in anywise subject to the inspection or control of respondents.

Respondents further answer and say, that they were not personally cognizant of the origin of the negotiation between complainant and said Frederic, nor of the representations and statements made at and before the sale of the lands, either by said Frederic Notrebe, or said Terence Farrelly, in respect to the quality, quantity, or title to, or incumbrances upon the lands in said bill mentioned; and they know nothing in respect of these matters, except what may be learned and gathered from the before-mentioned letters and documents, and from the answer of Terence Farrelly himself, their co-defendant herein, to be herewith filed; and they believe the said Farrelly has in his said answer truly and correctly set forth and stated the representations, statements, information, and advice he then gave to the said complainants in respect of the said lands, title, and any incumbrances thereon, and that such representations substantially were the same as those made and presented at the time by said Frederic, in respect of said lands, titles, and incumbrances, and they therefore adopt the answer of said Farrelly upon this subject as their own. And they aver, on their belief and information, and from their knowledge of the character of the said Frederic for candor and honesty, that said complainant never was deceived intentionally or otherwise by said Frederic or Farrelly in respect of the premises; but, on the contrary, that before and at the time of said sale of said lands, they candidly and fully set forth and disclosed the condition of the title to and incumbrances upon said lands, and pointed out to him the sources and means of any information in their possession, and to which he had or could readily have had access, and indicated to him the reasons for their opinions in respect thereof, and the means of verifying the correctness of those opinions, if incorrect, and to which means of information he had or could readily have had access, if he had chosen to do so; they in nowise attempting to conceal any facts, which he might have desired to know, or keeping back any information which he desired to have, or using any means whatever to induce the said complainant to rely upon any opinions they entertained.

And, on the contrary, they believed said complainant knew very well that he was making a most desirable purchase, at a very low price, and was determined to secure the lands at all hazards, and never did rely upon the representations of said Farrelly or Notrebe as to the nature of the incumbrances, but understood them very well, and relied upon the solvency of said Notrebe to remove them, and the great value of the lands, and only inquired of them at all for the purpose, if possible, of getting the lands at a very low and unreasonable price.

Respondents, further answering, say, that they are not personally cognizant of the facts as to the payments made by said Woodfolk for said lands; and upon this subject they believe the statements of said Terence Farrelly in his answer to be herewith filed to be true, and they adopt the same as their answer.

They further say, that, upon the advice of said Terence Farrelly, one of said executors, they themselves being ignorant of the legal effect and scope of the acts in a great measure, and relying implicitly upon the judgment of said Terence in the premises, signed, sealed, and acknowledged, and delivered to said Farrelly, jointly with said Mary F. Notrebe, in one instance, and with said Mary F. and Terence Farrelly, in the other, two several deeds; copies whereof are annexed to the answer of said Farrelly, to be filed herewith, marked respectively Exhibit D. and E.; upon the representation that said complainant was ready to pay the residue of the purchase-money, and was entitled to a deed for the land, and upon the further representation that said deeds were proper, and in conformity to the contract subsisting in respect thereof, and such only as said complainant was justly entitled to, and imposed only such obligations on the makers as were in truth, in law, or equity, imposed on them by the contract and covenants of said Frederic; and they believe and aver, that said deeds (which they pray may be taken as part also of this their answer, as the same are exhibited with the answer of said Terence), were tendered and offered to said complainant on his payment of the residue of the purchase-money, and rejected by him, as stated in the answer of said Farrelly; which answer as to said tender and refusal, they adopt as their own. Respondents expressly aver that said deeds were delivered to said Farrelly, merely as an escrow, to be delivered to said complainant when the residue of the purchase-money should be paid, and on condition they should be accepted in full compliance with and a discharge of the obligations and covenants for conveyances for said lands made by said Frederic to and with said complainant, and for no other purpose, and upon no other condition; and they believe and aver said deeds are still in possession of said Farrelly, and never in fact went out of his hands, or were delivered to any one. Respondents are willing, and submit themselves, if this Court shall so decree and determine, to make any such conveyance for said lands, with such covenants in respect of title, as said Frederic, if living, would have been bound to make under his contract with said complainant, or such as would bind his estate or heirs, to the same extent and no further, as the conevyance and covenants stipulated for by him, if made in his life, would have bound his estate or heirs. And they submit this is all complainant has a right under any circumstances to demand. And they submit that in executing said last-named deeds they were wholly though unintentionally misled, both as to their own obligations in the premises, the rights of said complainant, and the nature and scope of said last-named deeds and the covenants therein. They submit and are advised that said deeds upon their face import a warrantee of title, &c., binding not alone on the estate of said Frederic, dec'd, or upon them merely as his heirs, but upon them personally (at least upon said Edward C.), an obligation into which they were in no wise bound

to enter to said complainant. And they submit that these deeds are especially unjust to the said widow of said Frederic Notrebe, inasmuch as she was in no wise bound to do more than relinquish her dower in the lands, and they submit by the tenor of said deeds she is made guarantor of the title. These respondents, therefore, unless compelled by this Court, wholly refuse to deliver those deeds or retender the same to the said complainant, until, and unless, they are altered and changed so as to impose only such liabilities as they justly vest under to him in consequence of the aforesaid deeds and contracts of said Frederic, their ancestor; if indeed they are under any obligation to do so at all. Respondents further answering say that as to the particular chain of title or titles, to the several tracts of land in said bill mentioned, demised to the said Frederic Notrebe and William Cummins, respondents are not fully and particularly advised, but respondents believe said William and Frederic did hold and possess a full and complete title in fee, in law and equity to all of said lands. That the muniments of title and documents evidencing such legal and equitable title were by the parties delivered over to and placed in the custody and keeping of the said Real Estate Bank, upon and before the execution of any mortgage to her and said Bank, and her trustees and assignees next mentioned have ever since had the custody and control thereof, and respondents believe and suppose they still have, and although they have made every endeavor to procure copies thereof or access to all such title papers, they are wholly unable as yet to procure or produce the same at present, and they will beg leave hereafter to procure, if practicable, copies, or originals of all such evidences of title, and annex them to this their answer by way of schedule, or produce the same as this Court shall order before the master or other officer in case the Court shall so order or decree; these respondents having to their knowledge or belief none such evidences of title in their possession or under their control, unless they might procure copies thereof from the public records, where such papers may be recorded, and having no means to their knowledge to enforce the production thereof by said trustees and assignees of said Bank. These respondents submit that they are not bound and should not be required to produce and exhibit such evidences of title, even if within their reach, or copies thereof from the public records, which are equally open and accessible to said complainant, and that said complainant has no right to exact the same of them, inasmuch as they insist they, or the proper representatives of said Cummins and Notrebe, have the right to the possession of such muniments of title to resist any real or pretended adverse claim to the said lands, and are under no obligations upon a mere vague suggestion or suspicion to subject their titles to the cavilings of said complainant, or others, who may have or pretend to have some interest in the premises, and that until complainant is molested in the occupancy of the lands, he has no right to litigate or call in question their title;

even if by lapse of time only a title should be perfected in him or them, in virtue of a previous imperfect title. And they, therefore, claim and insist upon the right to resist and object to the production and exhibition of such papers and title as if they had demurred to said bill in that respect.

Respondents further answering say, that by a public act of the Legislature of the State of Arkansas, approved 26th October, 1836, provision was made for the incorporation and establishment of a Banking Institution, under the style of the Real Estate Bank of the State of Arkansas, with an original cash capital of two millions of dollars. Capital was to be raised by the sale of certain bonds of the State, to be issued after the stockholders had subscribed for stock therein, and received their stock by mortgages on real estate; which subscriptions were to be made in a certain manner, and the lands, titles, &c., offered in mortgage to secure stock, were to be reported upon and appraised, and a schedule thereof made and filed in the office of the Secretary of State of said State by certain officers appointed by the Governor of the said State, on faith whereof said State bonds were to be issued whereon to raise the capital stock of said bank. Respondents presume said act will be judicially noticed by this Court as a public law of this State; and if not, they crave leave to file a copy thereof as an exhibit to this answer, and to make the same a part hereof. Respondents have been informed and believe that said board of managers never was legally organized in conformity to the said charter, or met at the time therein prescribed, and discharged their duties as prescribed and contemplated in said charter; or in such manner as to warrant the issuance of any bonds of the State upon the faith of their action in that behalf, or to give to the stockholders acting in good faith in the premises the protection and security contemplated and promised by the provisions of said charter; but some pretend board of managers did assemble, as respondents suppose, who pretended to be a legal board, but in truth without warranty of law, and upon the faith of their actions alone the then State authorities proceeded to issue certain bonds, part of at least of which were sold by said bank and used as part of her capital; and the said bank was organized and went into operation pretendedly under the provisions of said charter. And whenever it shall become material or proper these respondents shall and will urge and insist that said bank never was legally organized, or said bonds legally issued, so as to be binding in law or equity upon the State or stockholders, or at all events upon the stockholders, in any manner or to any extent, and that the bondholders cannot enforce the payment or collection thereof, either against the State or stockholders; and that under the circumstances the issuance and sale of said bonds, and the attempt to hold bona fide stockholders liable therefor, would be a gross hardship if not fraud upon such stockholders.

Respondents further answering say, that they believe the mort-

gages aforementioned by said Frederic and William was executed by them in good faith, in order to meet the requirements of said charter, on the faith that said charter would be faithfully complied with in other regards, and in ignorance of any violation thereof.

Respondents further answering say, that said bank, after being organized as aforesaid, during the years 1837 or 1838, proceeded to do a banking business in the State of Arkansas up to about the 2d April, 1842, and in the meantime had expended all or nearly all its cash capital, and held as security therefor either mortgages or other liens upon a vast amount of lands, negroes, and other personal property, the lands, notes, &c. &c., of a great number of persons, in short had little or no ready means wherewith to pay its outstanding circulation and debts; and, although she had a very large amount of assets which were supposed to be ultimately available, such assets could not then be rendered available or converted into cash.

And on said second day of April, 1842, said bank made an assignment of all her assets and property to certain trustees and assignees, whose successors under the provisions of said deed of trust are in said bill correctly stated as co-defendants herein; a copy of which assignment is herewith filed as Exhibit X, and prayed to be taken as part hereof. That prior to as well as since the said assignment, a vast amount of litigation has existed in respect of the property claimed by said bank, and through her by said assignees, as well as in respect to the shares in action due her or claimed by her, and other liabities in her favor, which litigation has not yet ended, and may not end for some time to come; and although the said assignees have in their hands a vast amount of property and assets under said assignment, it cannot be ascertained precisely what will be realized therefrom, or what amount may be left of the State lands unpaid after a final settlement of the affairs of said bank. And this result has been a matter of opinion and speculation in Arkansas for years past, about which as many different opinions have existed perhaps as there have been persons who spoke upon the subject; and the situation and foregoing transactions of said bank have been matters of public history in this State from the times of their occurrence, about which almost every intelligent man in the State, then a resident thereof, was more or less informed, and said complainant could not have gone amiss anywhere in said State for persons well informed enough in respect thereof to have put him on his guard, and to have pointed him to the means of forming as correct an opinion as any one else had or could form in the premises, or, indeed, to point him to the very best sources of information upon all the subjects involved, as was in substance done by the said Farrelly at the time of the trade for said lands.

And your respondents submit that said complainant in effect vilifies himself, when he pretends that, after the statements of Notrebe and Farrelly to him, and after he had seen and read said mortgage

in Chicot County to the said Bank, and was in the midst of persons familiar with the subject, and who, if even inclined with many opinions, could not have failed to have information enough on the subject to put him on his guard, and indicate to him the sources and means of as full information as any one had or could have on the subject. That he did not still understand or appreciate the effects, scope, and object of said mortgage, and which were not duly visible on its face, but specially defined and pointed out by a public law of the land, and that he still relied upon what he falsely alleges were the representations and statements of Notrebe and Farrelly upon the subject, and in respect of that very mortgage, notwithstanding said mortgage on its face showed what they stated, if complainant's version of their statements were true, was totally false. That so far from its being a mortgage for $12,000, it purported to be a mortgage for, and to secure, $30,000, in addition to the $12,000, stated to him to have been a stock accommodation loan. Respondents aver, although they admit said complainant has made large and valuable improvements on said lands, the value or precise value and extent whereof they cannot state, having no certain or reliable information in respect thereto, except the statements of others, that the improvements are of the general description mentioned in said bill, which statements they believe to be true, that said complainant neither actually entered upon said lands or made any improvements whatever thereon, until after he had so seen, read, or was otherwise fully informed of the contents of said mortgage deed, and was fully put on his guard in respect thereof; and had readily within his reach the same information in regard to the said mortgage, and the nature of said mortgage and the nature of the incumbrance created thereby, which said Farrelly or Notrebe possessed or professed to have; and was fully satisfied with, or chose voluntarily, with the contract and securities he then held from said Notrebe, to take possession and run all risk of loss; and if he had not been so, upon the slightest intimation of dissatisfaction on the part of said complainant with his contract and arrangement, said Notrebe would have repaid the portion then paid of the purchase-money, and have released said complainant from his contract, and more especially if said complainant had in the remotest manner intimated to the said Notrebe or Farrelly that said complainant had been misled or imposed upon, in fact, or intentionally, the said purchase-money would have been refunded and the contract cancelled, if complainant had desired it; and this complainant, respondents believe, perfectly well knew; and if any doubt existed in his mind in respect of said property, title, or incumbrances, he was perfectly aware that his contract was a desirable one, and was willing to take all risk himself, with the securities he had, rather than endanger his obtaining the lands; and furthermore they aver, that not only from the face of said mortgage did it appear that said Cummins had claimed some interest in said lands,

but the records of the recorder of land titles in said County of Chicot exhibited the fact that said Cummins or others had caused to be recorded therein evidences of title and contracts and conveyances to various portions of said lands to said Cummins and Notrebe jointly; and respondents believe said complainant was advised of the existence of these evidences of title and claim at the time of his seeing or being advised of the existence of said mortgage as stated in said bill; and at all events they aver such information was constructively in his possession, as the laws of the land made the recording thereof notice to all the world; and this notice and information was possessed by him before he took possession of, or made any improvements whatever, on said lands, and the whole subject was open to his observation and attention, at the place where such information was required by law to be had and recorded, and where every one would seek and expect to find the same. And so respondents aver and submit that as said complainant made said improvements, whatever they are, upon said lands with his eyes open and satisfied with his contracts as they stood, and with the indemnity and security then held against future loss, if any, he has no right to claim now a change or alteration of his contract, but must abide those then made. And respondents further aver that the said lands were situate on and near the banks of the Mississippi River, and were nearly all covered by fine timber, there of great value for sale for the use of steam vessels navigating that river; and since his occupancy of said premises said complainant has cut and sold vast quantities of said timber, and realized therefrom very large profits, from their information really much exceeding all his improvements made upon said premises, and, added to the rents accruing from the use of said lands, would very nearly equal, if not greatly exceed, the value of such improvements and the amount so paid by him for said lands; and they pray an account (if this Honorable Court should deem it necessary or proper to interfere in the premises at all, or make any decree herein) may be taken of the said rents and income from the said lands; and if it be deemed or become necessary, they crave leave to present a cross-bill herein in respect thereof, so as to have and perfect a just and full account, and to have the appropriate relief as may pertain to justice.

Respondents, further answering, say, that they are advised said complainant is not entitled to any relief or discovery as prayed in said bill, and they shall and do reserve all objections thereto, which could or might have been urged on demurrer to the said bill, and shall urge and insist upon the same at the proper time; still, if the matter could become the proper subject of the action or any decree of this Court, they would be perfectly willing to rescind the entire contract in respect of said lands, and refund to the said complainant the purchase-money paid, with interest, at such time and in such manner as might be usual and customary in the country among

planters in respect of transactions of similar magnitude, after a just and fair account shall have been taken of the rents, and income from said property since in the occupancy of said complainant and offsetting the same against his expenditures in lasting improvements thereon, and applying any surplus of such rents and income to the payment of the purchase-money and interest; or if there be no surplus, or the improvements exceed in value the rents and income, then to pay him such excess of value in said improvements.

Respondents, further answering, say, that in no respect whatever was said complainant imposed upon, deceived, or misled, by anything said or done by said Notrebe and Farrelly in respect of said lands in any particular whatever, nor especially in regard to the interest or equity of redemption or other interest of said Cummins therein; said Notrebe, in his letter aforesaid, merely misapplying or using in a wrong sense English words, as was frequently his habit, being ignorant of the accurate use of English words, as stated in answer of said Farrelly; and, in any event, said complainant was put fully upon his guard, and before the sale was closed or he put in possession of said premises, he was fully advised and informed of said Notrebe's meaning and of the facts as to the said title and its condition, nothing being withheld of the facts or knowledge of said Notrebe, upon which he based his opinion, or which should have enabled said complainant to form a correct opinion, get at the whole facts, and take and have full advice in respect thereof, which it was his own folly not to have done. And respondents, furthermore, say, it is true, as alleged and set forth in the answer of said Farrelly, which, in this respect, they adopt and pray to be considered as part of their answer, they having no personal knowledge thereof, except as derived from said answer, and the records and documents accompanying the same, that the then trustees and assignees of said Real Estate Bank, of the State of Arkansas, instituted their suit in Chicot Circuit Court, to foreclose said Bank mortgage upon a portion of the lands in said bill mentioned, as appears and is fully shown by the transcript and proceedings thereof filed with the answer of the said Farrelly, marked Exhibit No. 1, to which they crave leave also to refer, and to have treated and considered as part of this their answer: and that, under the decree in said cause, the said lands therein mentioned were sold, as shown by the decree, report, and proceedings, contained in said Exhibit No. 1, to the said Terence Farrelly, the agent and attorney of said Frederic, and for him, and the deed therefor made by W. J. Neale, commissioner of said Court, a copy whereof is filed with and made part of said Farrelly's answer, marked Exhibit A, prayed to be taken as part of this answer also, for the prices therein specified; and respondents submit, whether said sale was not good and effectual to divest all interest of said William Cummins, and his heirs, in and to said lands, which said suit, to foreclose said mortgage of said Bank, was and had been

pending long before the negotiation for said lands between said complainant and said Notrebe, and fully exhibited the pretended claim of said Bank, or assignees, and showed the nature and full extent of and scope and tenor of said mortgage, of which respondents believe complainant had actual notice, and undoubtedly constructive notice. That from said decree as therein rendered said Breneman, one of the defendants therein, appealed to the Supreme Court of the State of Arkansas, and was reversed, as alleged in said answer of said Farrelly, which they adopt as their own upon that subject; and they submit, whether said proceedings were not still in full force and effectual as to any interests of said Cummins and his representatives. Respondents, further answering, fully adopt the answer of said Farrelly, as fully as if here repeated, in respect of the said suit and proceedings of the said George C. Breneman against said Farrelly and others; a transcript whereof is filed with said answer of said Farrelly, marked Exhibit No. 2, and is prayed to be taken as part hereof; and, in respect of the sale made thereunder by Johnson Chapman, as commissioner, and the deed made therein to the said Frederic, a copy whereof is annexed to the answer of the said Farrelly, marked Exhibit C, and which is prayed to be taken as part hereof.

And they, in like manner, adopt as their own answer the answer and statements of the said Farrelly in respect of his conveyance of said lands to the said Frederic mentioned in the deed, a copy whereof is annexed to the answer of said Farrelly, marked Exhibit B, and which is prayed to be taken as part hereof; and also adopt as their own said Farrelly's answer, in respect of the purchase of the said judgment of Frederic W. Trapnall, to the use of Trapnall and Cocke, against said William Cummins, and the proceedings thereunder, and the sale of certain lands mentioned in the deed annexed to the answer of said Farrelly, as Exhibit F, prayed to be taken as part hereof; respondents having no other knowledge in respect of the premises except that derived from said papers and exhibits, and the statements of said Farrelly, which they suppose and believe true in substance at least. And these respondents, in other respects where they have not specially answered, adopt the answer of said Farrelly as their own, as if the same were here repeated.

And as to the said first special interrogatory, respondents say they believe said Frederic and William Cummins were joint owners of said lands as above and in the answer of the said Farrelly set forth, and that upon this subject they have before fully answered.

To the 2d interrogatory they say, said Frederic and William did subscribe for 30,000 of the capital stock of said Real Estate Bank, as above set forth and under the circumstances before stated.

To the 3d interrogatory they say, said Frederic and William did execute a bond for sum in said last interrogatory named, to the said Real Estate Bank, representing their stock subscription, payable at

the time, and bearing interest as in said 3d interrogatory is stated, the date whereof they suppose to be the same with said mortgage above set forth and referred to.

To the 4th interrogatory they say, said Frederic and William did execute the mortgage in that behalf above mentioned, upon the lands therein stated, to secure the said 30,000 stock and interest and any advances made to them on their stock credit under the Bank charter; and they believe, said mortgage is correctly exhibited with said bill as Exhibit No. 5, to which exhibit they refer for the particulars of its contents and effect.

To the 5th interrogatory they say, said Trustees of said Bank did institute suit to foreclose said mortgage, for the purpose and object, and for the treaties of the conditions of said mortgage, which are specially named and pointed out in the transcript of said suit and proceedings, in said Exhibit No. 1, annexed to said Farrelly's answer above mentioned, to which document they crave leave to refer as true, without a repetition thereof; and that under said decree and proceedings, said lands were sold by William J. Neale, Commissioner, as shown in said Exhibit No. 1, and in the deed of said Neale above mentioned, and annexed to said Farrelly's answer, as Exhibit A, above made part of this answer.

To the 6th interrogatory they say, the same in its frame *seems* intended to procure an answer as to a mere question of law, and as that point of view they decline to express any opinion, respectfully referring the question of the legal effect and construction of said mortgage to the Court. But they expressly state and aver, on information on which they implicitly rely, that said Notrebe has long since paid and satisfied fully to the said Bank, or her assignees, every portion of principal and interest due from said Cummins and Notrebe for moneys advanced on the faith and credit of their said stock, and that said mortgage is no longer binding, or a subsisting security for any portion of such lands or advances on account of such stock, said Notrebe having himself paid and extinguished the same in full. They are wholly unadvised as to the particulars what has been done in respect to the 30,000 stock subscribed to the capital of said bank, and whether said Notrebe or others have paid the same or not, and whether said mortgage has been in that respect released or not, in form and by proper authority, and have no access to the means of information upon that subject, though they have reason to believe, and have been advised that as to the said stock said mortgage is not valid; and at all events they shall always resist the same on these grounds, as well as on the grounds that said Notrebe did in fact in his lifetime in some way extinguish the said mortgage in toto: but at present, as all the documents relating to such transaction are now in possession of said Trustees of said Bank, or their agents, and to which respondents cannot get access, and cannot therefore state the particu-

lars thereof: but the full nature and particulars whereof, by an independent proceeding against said trustees or their agents, they hope at the proper time to be able to obtain and establish, so as entirely to defeat recovery by any one upon said mortgage, for any amount whatever. But they submit and insist they are not bound to respond to the 6th interrogatory at all, and they shall reserve as if on demurrer the right to object to answering the same.

To the 7th interrogatory they say, they have before sufficiently answered the same, and adopt the answer of said Farrelly thereto, as their own in every respect, believing that true, and having no other reliable information in respect thereof. And they insist and reserve the right as on demurrer, to protect themselves from further answer, and from the production of the muniments of title.

To the 8th interrogatory they answer, that said Frederic did sell said lands to said complainant, as before set forth, upon the terms set forth in the contracts, deeds, and bonds before referred to, and set out fully; and said sale occurred during the pendency of said suit, to foreclose the said mortgage, by the Trustees of said Bank; and the dates of the different transactions, as above shown and exhibited, will show the precise condition of said suit at the time—they being unable to otherwise answer this part of said interrogatory than by reference to the documents themselves.

Respondents believe and suppose the titles to said lands have been, by the various proceedings aforesaid, invested out of the estate of said William Cummins, and his heirs, and are now vested in those of said Frederic, but this they submit to the better judgment of the Court, as they do also, as to present power and right of the Executors of said Notrebe, and these respondents, to transfer a title to the said lands, in conformity to the contract of said Frederic; said Mary, one of these respondents, being still under age; but submit themselves in this to the discretion of the Court.

Respondents deny all manner of fraud, misrepresentation, and combination or conspiracy, in said bill charged, in the general, for particular; and aver, on the formation and belief that the said entire transactions, in respect of said lands, were conducted with perfect fairness and candor, by said Notrebe and Farelly.

Respondents aver and submit that said complainant, upon the facts and circumstances disclosed in said bill, and existing in the cause, is not entitled to any discovery or relief in said bill prayed, or to any other; and upon the hearing, they reserve, and shall insist upon the right to object to the said bill, as on demurrer, upon the grounds of its not exhibiting such facts as to give this Court jurisdiction as a Court of equity, or entitling the said complainant to any discovery or relief whatever in the premises, and to have the same wholly dismissed for want of equity. Without this, that any other matter or thing herein not answered unto, confessed, denied, or avoided, is

true. And having fully answered, they pray to be hence dismissed with costs, &c.

CUMMINS,
Solicitor.

I, Edward C. Morton, one of the above-named respondents, being first duly sworn, state, on oath, that the annexed and foregoing answer, and the statements therein, are true, so far as detailed or stated, as in the knowledge of the parties respondent therein; and so far as stated, on hearing, information, or belief; and verily believe them to be true, so help me God.

E. C. MORTON.

Sworn to and subscribed before me, as presiding Judge of the County Court, in Pulaski County, at Arkansas District, this 10th day of March, A.D. 1852.

B. F. OWEN,
Presiding Judge of the County Court of Pulaski County.

Filed 11th March, 1852.

Attest, WM. FIELD,
Clerk.

The answer of Terence Farrelly, one of the executors of the last will and testament of Frederic Notrebe, deceased, to a Bill in Chancery, exhibited by William W. Woodfolk, in the Circuit Court of the United States, for the District of Arkansas, against him and others.

This respondent, saving now, and at all times hereafter, all and every exception that may be had or taken to the numerous errors, uncertainties, and insufficiencies, in said bill contained, for answer thereto, or unto such parts thereof, as this respondent is advised are material or proper for him to make answer unto, answering, saith he admits it to be true, that about the time stated in said bill, a correspondence by letter took place between complainant and his testator, the late Frederic Notrebe, deceased, in respect to the purchase of lands mentioned in said bill, but as to the language used by said Frederic in his letters, or the purport of said letters to said complainant on the subject, this respondent is unable to say, having no recollection of having ever seen the originals; that about the time mentioned in said bill, ninth of October, 1845, respondent went to the plantation of said Frederic, since deceased, near the Post of Arkansas, in Arkansas County, and found complainant there, bargaining with the said Frederic, for the lands mentioned and described in said bill, lying in the County of Chicot and State of Arkansas. This respondent also admits it to be true, that complainant, before he closed the bargain with said Notrebe, for the purchase of said lands, took the respondent one side, and inquired particularly about the incumbrance on said lands, and situation of the title. But it is

not true, as stated in said bill, that respondent told complainant that the only incumbrance on said lands, was a mortgage to the Real Estate Bank, for above twelve thousand dollars; on the contrary this respondent avers and says, that at the time mentioned, in the side conversation with said complainant, this respondent informed complainant, that the lands mentioned in said bill, and which he was about to purchase from said Notrebe, was or had been held jointly by said Notrebe and William Cummins, who was then deceased; that said Cummins and Notrebe, had mortgaged the said lands for stock in the Real Estate Bank; that Cummin's estate was insolvent, and there was a balance due the said Bank, of about twelve thousand dollars, for moneys drawn by said Cummins and Notrebe, on their stock from said Bank; that the estate said Cummins being insolvent, the said Bank had a suit then pending in the Circuit Court of Chicot County, to foreclose said mortgage, and that lands mortgaged to said Bank would be sold under a decree of Court; that Notrebe would become the purchaser of them, consequently be able to give a good title; that in respect to the liabilities of said lands on account of the State bonds issued for the capital of said Bank, there was some doubt, but that Captain Pike, who was the attorney for said Bank, expressed the opinion that there would be assets enough of the Bank to take up the bonds; and this respondent says that said Notrebe made a statement of the same import in presence of respondent to said complainant; and the said Notrebe, at same time, and prior to the purchase of said lands by said complainant, also mentioned to the said complainant, in presence of respondent, that a Mr. Barnett, a lawyer in Chicot County, had levied and sold under an execution, against said Cummins, his interest in said lands mortgaged to the Bank, on the ground of an omission in the deed of mortgage—the township and range not being specified; that said Barnett had purchased the under said sale for a mere trifle—a few dollars—and there was little to apprehend from his claim, as the lands mortgaged to the Bank could be sufficiently identified, and if there could be any doubt in respect to them, he, Notrebe, was willing to go into Court and prove the lands mortgaged; upon this explanation above stated, the said complainant purchased the lands mentioned and described in said bill, at ten dollars and fifty cents per acre, relying, as respondent then believed, on said Notrebe's covenant to warrant the title to the said lands. This respondent, further answering, says, that complainant being very anxious to purchase the undivided interest of the said William Cummins, then deceased, in the northeast quarter of section 21, and northwest quarter of section 22, mentioned in said bill, and not embraced in the said mortgage to the Real Estate Bank, agreed to purchase the same conditionally as mentioned in said bill, that is to say, if he, Notrebe, could procure title for the same before the complainant made the last payment for the other lands bargained for,—said complainant

was to pay the same price of ten dollars and fifty cents per acre for the same undivided half of the two quarter sections before mentioned; and this respondent further says, that under the explanations and conditions before mentioned, and on no other expressed in his presence, did the said complainant purchase of his testator, the said Notrebe, the lands mentioned and described in said bill. This respondent admits it to be true, that said complainant, at the time mentioned in said bill, paid to said Notrebe, in part payment of the purchase-money for said land, the sum of seven thousand dollars, in notes of the Banks of the State of Tennessee, and sixty-six cents, and executed his notes each for the sum of twenty-two hundred and seventy dollars, payable in one, two, and three years from the first of April, 1846.

And thereupon the said Notrebe and Mary Felicite Notrebe, his wife, executed their bond to said complainant, in the penal sum of twenty-eight thousand dollars, to convey by good and sufficient deed, with general warrantee of title and relinquishment of dower, duly executed according to law, the said lands with their appurtenances, to said complainant, his heirs and assigns, forever, which bond was written by this respondent, and bears date the 22d day of October, 1845; but this respondent cannot say whether the exhibit filed is a true copy of said bond, not having the original to compare with it, but admits every word and figure in the original of his handwriting to be true and correct as respects the covenant and conditions therein *therein* contained.

This respondent also admits it to be true, that said complainant executed his bond to said Notrebe, which was also written by the respondent, for the sum of sixteen hundred and eighty dollars, conditioned for the payment of that sum to the said Notrebe, upon his obtaining title to the undivided interest of said Cummins, in the said quarter sections before mentioned; and in case said Notrebe could not procure title to the same before the payment of the last note for the purchase-money became due and paid, the said last-named bond was to stand as a defeasance to the former, so far as the covenants therein had reference to the undivided interest of said Cummins, in the quarters before mentioned of sections 21 and 22; which last-mentioned bond respondent having given up to complainant, cannot say whether the exhibit filed with said bill is a true copy, but the respondent admits every word and figure in said bond contained of his handwriting to be true and correct. This respondent admits that Mr. Notrebe may have said to complainant that he was the owner of the said *of the said* lands mentioned and described in said bill, from the fact that he was personally responsible, as Cummins, who was, or had been his son-in-law's security for the money he (Cummins) had received from the said R. E. Bank, on their joint stock, and that Mary, the daughter to said Cummins, was his (Notrebe's) sole heir, and that he had made up his mind to become the

purchaser upon the bank mortgage; and in addition to this, a mortgage under our law being nothing more than an equitable lien to secure the payment of money, no one in this State, whose property may be incumbered by mortgage lien, but what claims the mortgage property as his own, so long as he has the right to redeem *redeem*. But that he, Notrebe, made use of any such expression with a view to deceive the complainant or any other person, or induce them to purchase said land under such pretence, this respondent cannot and does not believe true; and this respondent further says, that no such expression was made by him to said complainant, or by said Notrebe, in presence of respondent, to said complainant, that could mislead him, complainant, in respect to the existing undivided interest of the heirs of said Cummins, at the time of the sale of the same by said Notrebe to said complainant, but on the contrary, it was expressly mentioned, the manner in which Notrebe was to become the owner under a decree of sale to be made upon foreclosure of said mortgage, upon which a suit was then pending as before in this answer named. This respondent, therefore, says that it is not true, that he, complainant, was deceived or misled, in respect to said Notrebe being the sole owner of said lands at the time he, complainant, purchased the same as hereinbefore mentioned. This respondent admits it to be true, that complainant, after the purchase of said lands, removed his slaves from the State of Tennessee to said lands, and has had them settled from thence hitherto on the same; that he, respondent, has cleared a large quantity of said lands, but the number of acres respondent is unable to say. But this respondent avers it to be true, that at the time said complainant took possession under said sale, the said land mentioned was in a wild state, covered with a growth of value timber, which complainant cut off the lands so cleared, and from other of said tracts of land not cleared, and sold to steamboats for a large sum of money, more, as respondent is informed and believes, than the value of the clearing and improvements made by complainants on said lands mentioned in said bill. This respondent admits it to be true, that said Notrebe, after the sale of said lands, sold and indorsed two of said complainant's notes to A. L. Shotwell, of Louisville, Kentucky, as stated in said bill, one of which became due the 1st of April, 1847, and the other the 1st of April, 1848; and that after the first of said notes became due, the said Shotwell, to whom they had been assigned, demanded payment of complainant, and that said complainant declined paying said note, on the ground of the claim of George C. Breneman, mentioned in the forepart of this answer as Barnett's, the said Barnett having acted as attorney for said Breneman, a judgment-creditor of the said William Cummins, who was then deceased; but this respondent, further answering, says, that the matters alleged in said bill, in regard to this matter, is not correctly stated in said bill, and he, respondent, says and avers the truth of the matter to be: that prior to the purchase of

said land by complainant from Notrebe,—say on 27th day of June, 1843, the trustees of the Real Estate Bank, of the State of Arkansas, filed their bill in the Circuit of Chicot County, against E. Cummins, administrator, Frederic Notrebe, Mary Cummins, George C. Breneman, and Samuel E. Jones, stating, among other things, that said Notrebe and William Cummins, in his lifetime, had mortgaged the following lands to said bank, to wit, N. E. fl. ¼ of sec. 27; S. W. ¼ of fl. sec. 22; S. E. ¼ of fl. sec. 21; W. ½ sec. 21; N. W. ¼ of sec. 28; E. ½ of sec. 28, and S. W. fl. ¼ of sec. 23, in township 19 S., range 1 W., which lands are the same, except S. W. ¼ of sec. 23; that complainant, as before named, purchased of said Notrebe, and prayed that the equity of redemption of defendant be barred, the said mortgage foreclosed, and the said lands be sold to pay the mortgage debt, upon which suit certain proceeding was had; and that on the 14th of November, 1845, the case came on for final hearing, and the said court did decree therein, that said mortgage be foreclosed and the equity of redemption of the defendant be barred, and the said land above described be sold to satisfy the mortgage debt and interest, and by said decree W. J. Neale was appointed a commissioner, to make sale in conformity with said decree; that said W. J. Neale, as commissioner, proceeded to sell said in accordance with said decree, and on the 11th day of May, 1846, before the court-house door in the County of Chicot, between the hours appointed by law for judicial sales, offered said lands to the highest and bidder; and this respondent being the highest and last bidder, at the said public sale, became the purchaser of the said lands, for the sum of eleven thousand six hundred and seventy-six dollars and forty-four cents, as will more fully from a certified transcript of the Clerk of Chicot Circuit Court, under his official seal, *marked No.* 1, and filed herewith as part of respondent's answer to said bill; and respondent further says, that after the said court made the said decree, the said defendant, Breneman, made application by petition to the Honorable Thomas Johnson, Chief Justice of the Supreme Court of the State of Arkansas, for an appeal from the decree of said Circuit Court before named, which was, upon the said Breneman's entering into recognizance, granted by the said Supreme Court, on the 4th of May, 1846, as will more fully appear by exhibited filed, marked No. 1, referred to as part of this answer. And said respondents, further answering, say, that the said William J. Neale, as commissioner aforesaid, by deed duly executed in accordance with law, bearing date the 12th of May, 1846, conveyed said lands so sold by him as commissioner to this respondent for the consideration before named; and respondent, by deed duly executed, bearing date the 13th of May, 1846, conveyed the same for the consideration of eleven thousand seven hundred dollars, conveyed same lands to said Notrebe, both of which deeds duly made, of record in the proper office in said county, copies of which

are hereunto annexed as part of this answer, marked A. and B.; and this respondent further says, that he is informed and believes it true, that after said complainant refused to pay his said note, after it became due, to said Shotwell, to whom Notrebe had assigned, as in said bill mentioned.

And this respondent further says, and admits as true, that the said George C. Breneman, filed his bill on the 9th day of July, 1847, in the Circuit Court of Chicot County, against Ebenezer Cummins, administrator of the estate of William Cummins, deceased, Mary Cummins, daughter and sole heir of the said William, Frederic Notrebe, Terence Farrelly, and William W. Woodfolk, stating therein, among other things, that as the assignee of George Brungard, he had, by the judgment of the United States Circuit Court, for the District of Arkansas, recovered against William K. Inglish and Thomas H. Johnson, late partners under the name of Inglish and Johnson, and Lorenzo Gibson, and William Cummins, the sum of seven thousand six hundred dollars and twenty-four cents, which were adjudged to him for his damages, together with his costs. And the object of his suit was to obtain the decree of said Court, enforcing his lien under said judgment against certain lands of the said William Cummins, mentioned and described in said bill, lying in the said County, and also to perfect and quiet his title to the undivided interest of said William Cummins, in the lands before in this answer specified and described, which said undivided interest in said lands had been purchased by said Breneman, through said Barnett, as before named in this answer, alleging that the said decree of the said Circuit Court of Chicot County, under which respondent had purchased said lands at the sale before mentioned, made by the said William J. Neale as Commissioner, had been annulled by a decision of the Supreme Court of the State of Arkansas; and such proceedings were had in said suit, that upon a hearing of the case, to wit, on the 13th day of November, 1847, it was adjudged and decreed that the said undivided interest of the said William Cummins, in said lands, be sold on the fourth day of the next term of said Court, and by said decree, Johnson Chapman was appointed Commissioner to make said sale in conformity with said decree, as will more fully and at large appear, by the transcript of the proceedings and record in said suit, a certified copy of which, under the seal of said Court, is herein filed as part of this answer, marked No. 2; and respondent further says, that Albert Pike, Esquire, by an agreement with said Barnett, purchased said Breneman's interest in the said undivided interest of Williams in said lands before described, which had been levied and sold by the U. S. Marshal for the District of Arkansas, on execution sued out of the office of the Circuit Court of the United States, for said district, in the suit before mentioned, and purchased from said Marshal, at public sale by said Barnett, for said Breneman, for the sum of thirty-five hundred dollars, one thousand dollars of which sum the said Pike

paid to said Barnett, as attorney; but whether the purchase of said undivided interest was made by said Pike, before or after the rendition of the decree last above mentioned, respondent is not informed or knows; the said Pike having agreed to let Mr. Notrebe have the interest so purchased of said Breneman; this respondent, as the agent of said Notrebe, attended the Commissioner's Sale for the purpose of purchasing the said undivided interest of William Cummins in said lands, and respondent, at the public sale of the same, before the door of the court-house in said County, on the 11th day of May, 1848, being the fourth day of the succeeding term of said Court after the rendition of said decree, being the highest and last bidder, became the purchaser of the same in the name and for the use of said Notrebe, for the sum and consideration of thirty-five hundred dollars, as will more at large appear on reference to the deed of conveyance of the said Johnson Chapman, Commissioner, to said Notrebe, duly executed in conformity with law, and made of record in the proper office in said county, a copy of which is hereunto annexed, marked C, as part of this answer. This respondent knows nothing of a letter mentioned in said bill, as dated the 8th of August, 1848, written by said Notrebe to said complainant, having no recollection of having seen such a letter, or heard said Notrebe speak of such a letter, but this respondent says, that said Notrebe may have used the words sole owner, mentioned in said bill, and doubtless did consider himself the sole owner of said land, as he might well do, after the purchases before mentioned.

This respondent, further answering, says, that said Notrebe was was by birth a native of France, and although sufficiently acquainted with the English language to converse and transact business in that tongue, he had not a correct grammatical knowledge of the language sufficient to express his opinions and thoughts correctly, or as many other men do; the said Notrebe was remarkable for making use of the strongest and most forcible words in the English language to express his ideas. And this respondent says, that a long and intimate acquaintance with said Notrebe, and his manner and mode of expression in the English tongue, has led respondent to believe, and he does believe, that the intent and meaning of said Notrebe could be better understood, by making use of such words as other men would under like circumstances use, instead of the strong and forcible words used by him, and not unfrequently misapplied to the subject. Respondent therefore believes that such words, and in his correspondence by letter with complainant, where they differ from such words as other men, better acquainted with the language, would use on like occasions, ought to be taken with proper allowance.

This respondent, further answering, says, that after the complainant had made the purchase of the lands mentioned in said bill, said Notrebe spoke with the respondent about endeavoring to procure title to said Cummins's undivided half of the two quarter sections mentioned in said bill, and proposed to respondent that if he could

find a judgment against said Cummins that could be made to answer the purpose, he, Notrebe, would purchase it, on account and for the joint benefit of respondent and himself, respondent to attend to the matter, on this understanding, with said Notrebe. Respondent made a search, and found on the records of Pulaski Circuit Court a judgment, of record in said Court, at the suit of Frederic W. Trapnall, for the use of Trapnall & Cocke, recovered against said William Cummins in his lifetime, and after the death, said William revived, upon *scire facias*, against Ebenezer Cummins, administrator of the goods, chattels, rights, and credits of said William deceased; that the amount of said judgment, interest, and cost of suit, at the time, amounted to about two hundred dollars, for which said Notrebe gave his note to said Trapnall, and charged one-half the amount on his books to respondent; that respondent had sued out of the Clerk of the Circuit Court of Pulaski Office a writ of fi. fa., directed to the sheriff of Chicot County, which came into the hands of Thomas Ruse, at the time sheriff of said county, who wholly neglected to levy the same. Whereupon return of said writ, an alias writ of fi. fa. issued, directed to the sheriff of Chicot County, which came to the hand of J. B. Thredgold, then sheriff of said county, who levied the same on the undivided interest of said Cummins, on the northeast one-fourth of Sec. 21, and northwest one-fourth of Sec. 22, being the two quarter sections in said bill mentioned, and also upon some other lands of said William in said county; and the said Thredgold, as sheriff, having returned the said writ of fi. fa. unsatisfied, without sale of the lands levied upon, a writ of venditioni exponas was sued out of the said Clerk's Office, directed to the sheriff of said County of Chicot, which said writ of ven. ex. came to the hand of the said Jas. B. Thredgold, then at the time sheriff of said county, who, as sheriff, proceeded in accordance with the mandate of said writ, proceeded to sell said lands so levied on, by first advertising said lands in the manner prescribed by law, and on the 29th day of October, 1849, being the first Monday of said month, and first day of the Term of the Circuit Court, before the court-house door, in and for said county, and between the hours appointed for judicial sales, the said Thredgold, then sheriff, in his official capacity as such, offered the interest of the said William Cummins, in the said two quarter sections of land above-described, to the highest and last bidder, at which time, and place, and public sale, respondent being the highest and last bidder, became the purchaser for the sum of fifty dollars; and thereupon the said Thredgold, as sheriff, for the consideration aforesaid, made and executed his deed in due form of law to respondent, and which deed has been duly acknowledged and made of record in the proper office for the record of deeds *record of deeds*, in and for said county, a copy of which deed, marked D, respondent hereto annexes as part of his answer to said bill. And this respondent, further answering, says, that is not true that the *fee* of the said lands

purchased of Notrebe by complainant, is in the Real Estate Bank of the State of Arkansas; on the contrary, the respondent submits and insists that, under the laws of this State, the fee continued in said Notrebe and Cummins, as mortgagors in possession of said land, after the execution and delivery of the said deed of mortgage. And this respondent, further answering, and again reiterates and says, that it is not true, as stated in said bill, that complainant had no knowledge of the lands being mortgaged to the Real Estate Bank for stock at the time he purchased them; the whole matter was talked over in side conversation with respondent, and with said Notrebe in presence of respondent, and nothing concealed or kept back, and it was remarked at the same time by said Notrebe to said complainant, who appeared apprehensive of some future liability of said lands, on account of the State bonds, issued for the capital of said bank, that it was the opinion of Capt. Pike, the attorney for said bank, that there would be sufficient assets of the bank to take up the bonds; and said respondent says, that said Frederic Notrebe departed this life in the beginning of *of* April, 1849, testate; that respondent, Louis L. Refeld, and A. K. Thedford, executors named in the will of said Notrebe, have proved up said will, and taken upon themselves the execution thereof, as more fully will appear by the certified copy of said will and letters testamentary, a certified copy of which is herewith filed, marked No. 3, as part of this answer. And this respondent admits it to be true that Mary Felicite Notrebe, widow, and Mary F. Cummins, daughter of said William Cummins, who has, since the death of said Frederic, intermarried with Edward C. Morton, are the only heirs of him the said Frederic surviving; respondent also admits it to be true, that about the time mentioned in said bill, he wrote a letter to complainant to the purport of that mentioned in said bill as Exhibit No. 8. And respondent, further in answer, says, that the said Notrebe did not give authority by his said will to his executors to convey lands; that said will was made anterior to the purchase of the said land by complainant, and so far as respondent knows (and the respondent was well informed in respect to said Notrebe's affairs) there was no covenant of said Notrebe's out for the conveyance of land at the time he made said will. And this respondent submits and insists that the said Mary Felicite Notrebe, widow, and Edward C. Morton, and Mary F. his wife, heirs of said Notrebe, deceased, have no interest *interest* whatever in the lands mentioned in said bill, and sold by said Notrebe to complainant, than barely mere legal title, and with it descended the covenant real, made by said Frederic with complainant in that behalf; and that under the laws of the State of Arkansas, they are fully competent to make by deed a good and valid conveyance, without the interposition or aid of a Court of Chancery; and that the said complainant being in quiet and undisturbed possession of the lands so sold as purchaser for a full consideration, paid as such under the laws of this

State, he is considered the owner, and would have good grounds to say he was the owner of said lands in his conversation or letters to other person who might wish to purchase of him the same lands.

And respondent, further in answer to said bill, denies the allegations therein contained, that said Mary F. Cummins, now Mary F. Morton, has now a subsisting interest in the lands mentioned in said bill, in the right of her father, William Cummins, decd.; on the contrary, the respondent avers and says, that the estate of the said William was insolvent, and her right as heir of said William, in said lands, has been divested first by the suit of Breneman, wherein she was made a party defendant, and appeared by guardian ad litem, and denied all the allegations in Breneman's bill, as will appear by Exhibit No. 2, filed as part of this answer. Second, in respect to the northeast one-fourth section 21, and northwest one-fourth section 22, by the sale under a writ of ven. ex. at the suit of F. W. Trapnall, for use of Trapnall & Cocke, against said William, as before in this answer mentioned and copy of sheriff's deed exhibited, marked D. as part of this answer, respondent further says, that he did not purchase the undivided interest of said William in the northeast and northwest one-fourth of sections 21 and 22, as executor of said Notrebe, but in his own name, for the benefit of respondent and the estate of said Notrebe, as the joint owners of the said judgment before named, under the understanding with said Notrebe, in his lifetime and in this answer before mentioned, to divide equally between them the said sum of sixteen hundred and eighty dollars, the purchase-money, or amount named in the said bond of defeasance, which said complainant had agreed to pay on procuring title to said undivided interest in said two quarter sections before named; and respondent, further answering, says, that in the month of March, 1850, he, respondent, went to the plantation of complainant, the premises mentioned in said bill, in Chicot County, taking with him as the executor of said Notrebe, complainant's last note for the purchase-money of said land, due the first of April, 1849, and also complainant's bond for sixteen hundred and eighty dollars, the consideration for the undivided interest in the said bill and this answer, to the said two quarter sections of land before named and described, and he, respondent, there found the complainant, who in settlement with respondent as executor paid him the amount of his said note, and interest up to the time, and also the sum of sixteen hundred and eighty dollars, the amount of his bond—complainant refused to pay any interest on the latter sum; and upon making said payments, respondent delivered up complainant's note and bond; that respondent having understood that said complainant was ready to make the payments named, he, respondent, before leaving home, had procured and caused be executed, in conformity with law and strict compliance with the covenants contained in said Notrebe's bond to complainant, the following deeds, with general warrantee of title, for the whole of lands mentioned in said bill

purchased by complainant of said Notrebe, in his lifetime, viz., the deed of Mary Felicite Notrebe, and Edward C. Morton, and Mary F. Morton, his wife, for all lands mentioned in said bill, except the northeast quarter of section 21 and northwest quarter of section 22, and for these last quarter sections the deed of the said Mary Felicite Notrebe, Edward C. Morton, and Mary F. Morton, his wife, and Terence Farrelly, the respondent, also the deed of Joseph B. Thredgold, Sheriff of Chicot County, and said Farrelly, for the undivided interest of William Cummins in the two last-named quarter sections of land, copies of which deeds, D, E, F, and are hereunto annexed as part of this answer; and respondent further says, that on the payment of to him by said complainant in full consideration of said lands, he, respondent, tendered the said deeds to complainant in discharge of Notrebe's bond, which he, respondent, wished to take up or cancel, but that said complainant positively refused to receive said deeds, saying at the same time that he, complainant, preferred to hold on to the bond, upon which respondent remarked that he would hold said deeds as an escrow to be delivered at some future day, and respondent still holds said deeds as an escrow, and brings them into the honorable Court as a tender in full discharge of said Notrebe's bond and covenant; and respondent submits, whether complainant is rightfully, or under the covenants in said bond, can claim any other or further assurance of title from the said heirs and representatives of the said Frederic Notrebe; and respondent further submits, that, as the first and only mortgage of the lands mentioned, executed by said Notrebe to the Real Estate Bank, was defective, and the undivided interest of said Cummins, in said lands, sold under a judgment lien, declared and enforced by a court of competent jurisdiction, the said lands are free and clear from the enforcement of any lien in respect to the State bonds issued for the capital of said Bank, in the hands of the complainant or his assignee, should he dispose of the same; and as to all other matters in said complainant's bill contained, and not herein answered, traversed, or denied, respondent admits as true, and in answer to the interrogatories attached to said bill respondent makes answer as follows, viz.:

To the First Interrogatory. Respondent says, they were joint owners of said lands purchased by complainant, but respondent submits whether complainant has any right to call on respondent to set forth the muniments of title, by which said Notrebe and Cummins held said lands; such muniments are the property of the heirs, and necessarily in their hands to enable them to defend the warrantee of their ancestor, in case of an adverse claim; respondent therefore denies the right of complainant in this case to have an exhibit of said muniments.

Second Interrogatory. The said Notrebe and Cummins did subscribe for thirty thousand dollars of the stock of said Bank.

Third Interrogatory. Respondent believes they did execute their

bond for that sum, but never having seen the bond, knows nothing particular of the date, and his information, in this respect, is no more than is common with every person who read the charter of said Bank, the requisites of a stockholder.

Fourth Interrogatory. Respondent believes they did; but has no recollection of having ever seen or read such deed of mortgage, consequently can't say whether exhibit is a true copy.

Fifth Interrogatory. In answer, respondent refers to Exhibit No. 1, filed as part of this answer, and also Exhibit A. and B. attached hereto.

Sixth Interrogatory. There is no debt or money due the said Bank by Notrebe and Cummins, so far as respondent is informed and believes, that said mortgage could stand as a security for.

Seventh Interrogatory. Notrebe owned the undivided half of the quarter sections of land at the time of sale to complainant, but respondent, for reasons assigned in answer to First Interrogatory, declines to set for the muniments.

Eighth Interrogatory. Notrebe sold said lands to complainant on the terms mentioned in the first part of this answer; at the time of sale, a suit was pending in Chicot Court, by Real E. Bank, to foreclose said mortgage; see Exhibit No. 1, filed.

Ninth Interrogatory. Notrebe did not represent himself as the sole owner of the lands mentioned, but said the lands were mortgaged the R. E. Bank by himself and Cummins; that the debt due the Bank was about twelve thousand dollars; that the Bank had a suit pending to foreclose the mortgage, and that said lands would be sold under the decree of Court, and he, Notrebe, would purchase them; and then being the *sole owner*, he would be able to make a good title.

Tenth Interrogatory. Farrelly, in the side conversation with complainant, said, the representations of said Notrebe, in respect to the title to said lands, was correct, the same as stated in the answer to the foregoing interrogatory; but said representations made by Notrebe differed materially from those stated in the bill, the truth of which is denied in this answer.

Eleventh Interrogatory. Yes, both Notrebe and Farrelly, at the time mentioned, knew that said lands, except the two quarter sections, were mortgaged to the Real Estate Bank for stock; and in conversation at the time informed complainant of it.

Twelfth Interrogatory. Yes, the said mortgage was mentioned severally by both Notrebe and Farrelly.

Thirteenth Interrogatory. Respondent is unable to answer this interrogatory, without seeing the original.

Fourteenth Interrogatory. Said Notrebe died in the beginning of April, 1849, leaving a will, of which an *exemplication* is annexed as part of respondent's answer. Louis L. Refeld, A. B. K. Thedford, and Terence Farrelly, named executors in said will, have taken upon themselves the burden of execution of said will. Mary Feliciti

Notrebe, widow, and Edward C. Morton, and Mary his wife, heirs and devisees.

Fifteenth Interrogatory. Yes, respondent is informed and believes the complainant has paid the whole of the purchase-money for said land.

Sixteenth Interrogatory. The Executors have no power or authority to make a conveyance. The title at the time of Notrebe's death may be seen by reference to the Exhibit, hereto attached as part of this answer, marked A, B, C, D, E, F, the original of which is open to inspection, in the hands of respondent's solicitor, and to be produced in the Honorable Court. And respondent having now answered said Bill and Interrogatories, prays to be dismissed with his costs.

T. FARRELLY.

State of Arkansas, Arkansas County, *ss.*

I, Terence Farrelly, do solemnly swear that the facts stated and set forth in the foregoing answer, as of my own knowledge, are true, and that those stated on the information of others, I believe true, so help me God.

T. FARRELLY.

Sworn to and subscribed before me, this 19th day of February, 1852.

W. H. HALL BURTON,
Clerk of the Circuit Court of Arkansas County.

Exhibit A.

This deed, made the twelfth day of May, in the year of our Lord one thousand eight hundred and forty-six, by and between William J. Neale, of the County of Chicot, and State of Arkansas, a commissioner appointed by a decree of the Circuit Court of Chicot County, in Chancery, to make sale of lands under said decree, made in a suit therein depending, wherein Sam. C. Roane and others, surviving trustees of the Real Estate Bank of the State of Arkansas, were plaintiffs, and Ebenezer Cummins, as administrator of William Cummins, and others, were defendants of the first part, and Terence Farrelly, of the County of Arkansas, and same State, of the second part, witnesseth: that, whereas in a certain suit in the Circuit Court of Chicot County, in Chancery, wherein Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, Jr., Anthony H. Davis, Sanford C. Faulkner, Silas Craig, George Hill, James H. Walker, Enoch J. Smith, and John Drennen, surviving trustees of the Real Estate Bank of the State of Arkansas, were plaintiffs, and Ebenezer Cummins, as administrator of all and singular the goods and chattels, rights and credits, which were of William Cummins, deceased, Frederic Notrebe, Mary Cummins, George C. Breneman, and Samuel E. Jones, defendants:

It was, at the November of said Court, on the 14th day of November, 1845, by the same Court, in chancery sitting, among other things, ordered, adjudged, and decreed, that, unless the defendants, or one of them, pay to the said plaintiffs the several sums of money therein mentioned and interest, on or before the first day the next term of said Court, the mortgage therein mentioned would be foreclosed, and the equity and redemption of each and all the defendants in the lands and tenements hereinafter particularly mentioned and described, barred, and said lands sold at public sale to the last and highest bidder for cash in hand, on the first day of the next term of said Court, between the hours of judicial sales, at the court-house door, in the County of Chicot, by William J. Neale, who was thereby appointed a commissioner to make said sale, by one advertisement, at least thirty days prior thereto, in the Arkansas State Gazette, a newspaper published in this State, &c.; the said party of the first part, as commissioner aforesaid, in obedience to said decree, and in conformity with the provisions thereof, under the power and authority in him vested, advertised said lands by notice of sale or advertisement, wherein said lands were described particularly, published in the Arkansas State Gazette, a newspaper printed in this State, by successive weekly insertions for two weeks, more than thirty days prior to the first day of the present term of said Court; and on the second day (Monday) of May, 1846, being the first day of the next succeeding term of said Court, and the day appointed by said decree for the sale of said lands, as mentioned in said advertisement, between the hours by law appointed for Judicial sales, before the court-house door of Chicot County, the place appointed by said decree and mentioned in said advertisement for the sale of said lands; the said several sums of money and interest mentioned in said decree amounting in the whole, including interest, to the sum of eleven thousand five hundred and sixty-eight dollars and ninety-eight cents, being and remaining wholly unpaid, the said party of the first, as commissioner aforesaid, proceeded to sell said lands by offering them in separate tracts, as hereinafter designated and described, to the last and highest bidder, at which time and place aforesaid, being the eleventh day of May, 1846, and first day of the present May term of said Court, between the hours for judicial sales, the said Terence Farrelly, the party of the second part, being the last and his bidder, became the purchaser of each tract designated and described in said decree and advertisement as follows, for the sums and consideration annexed to each, to wit: the northeast fractional quarter of fractional section twenty-seven for the sum of sixteen hundred dollars, the southwest quarter of fractional section twenty-two for the sum of fifteen hundred dollars, the southeast quarter of section twenty-one for the sum of fifteen hundred dollars, the west half of section twenty-one for the sum of three thousand dollars, the northwest quarter of section twenty-eight for the sum of fifteen hundred dollars, the east half

of section twenty-eight for the sum of two thousand dollars, and the southwest fractional quarter of fractional section twenty-three for the sum of five hundred and seventy-six dollars and forty-four cents, said lands all lying in Township nineteen south, of Range one west, and situate in Chicot County, State of Arkansas; wherefore this deed further witnesseth, that the said party of the first part, as commissioner aforesaid, in virtue of the power in him vested by said decree, under the advertisement and public sale aforesaid, for and in consideration of the several sums of money before mentioned, amounting in the whole to the sum of eleven thousand six hundred and *and* seventy-six dollars and forty-four cents, to him in hand paid by the second party of the second part, at and before the ensealing and delivery of these presents, the receipt of which payment is hereby acknowledged, hath granted, bargained, and sold, and doth, by these presents, grant, bargain, and sell unto the said party of the second part, his heirs, and assigns, forever, the foregoing several described tracts and parcels of land, containing, in the whole, twelve hundred and eleven acres and 84-100 of an acre, lying and situate in Chicot County, State of Arkansas, and every part and parcel thereof; to have and to hold the said described tracts and parcels of land, and every part thereof, with all and singular the tenements, hereditaments, appurtenances, and privileges thereunto belonging, or in any manner or wise appertaining, unto the only proper use, benefit, and behoof of him, the said party of second part, his heirs and assigns, forever, absolutely, in as full and complete manner as the said party of the first part, as commissioner aforesaid, in virtue of and under the power in him vested by said decree under the said advertisement and public sale aforesaid, could or might sell and convey the same.

In witness whereof the said party of the first part, as commissioner aforesaid, hath hereunto set his hand and seal, as such, the day and year first above written.

W. J. NEALE. [SEAL.]

Words interlined before signing, to, on the first page, land, forever, party of the first part as, on the second page.

Witness,
ALBERT PIKE,
A. MEANY.

State of Arkansas, Chicot County, *ss.*

In Chicot Circuit, May Term, A. D. 1846.

Personally appeared in open Court, William J. Neale, who produced a deed made by him as Commissioner, under a decree of this Court, at the last November Term, in Chancery, in a suit then in this Court pending, wherein Samuel C. Roane, and others, surviving trustees of the Real Estate Bank of the State of Arkansas, were plaintiffs, and Ebenezer Cummins, as administrator of William Cum-

mins and others, defendants, to Terence Farrelly, for the northeast fraction quarter of fractional section twenty-seven; the southwest quarter of fractional section twenty-two; the southeast quarter of section twenty-one; the west half of section twenty-one; the northwest quarter of section twenty-eight; the east half of section twenty-eight, and the southwest fractional quarter of fractional section twenty-three, in Township 19 south, Range one west, lying and being situate in Chicot County, State of Arkansas, and being to the Court personally known as the person appointed Commissioner by said decree, and whose name is signed to said deed, acknowledged in open Court, that he had, as Commissioner aforesaid, executed the same as his act and deed, for the consideration and purpose therein mentioned and set forth.

In testimony whereof, I, William J. Neale, Clerk of said Court, have hereunto set my hand as Clerk, and affixed the seal of said Court at office, this the 12th day of May, A. D. 1846.

W. J. NEALE,
Clerk.

State of Arkansas, County of Chicot, *ss.*

I, William Jerry Neale, Clerk of the Circuit, and ex-officio Recorder for the County aforesaid, do hereby certify, that the annexed and foregoing instrument of writing was filed for record in my office, on the 12th day of May, A. D. 1846, and the same is now duly recorded in Record Book E, pages 445, 446, 447, and 448.

In testimony whereof, I hereunto set my hand, and affixed the seal of my office, at Columbia, the 15th day of June, in the year of our Lord one thousand eight hundred and forty-six, and of the Independence of the United States the 70th.

W. J. NEALE,
Clerk and ex-officio Recorder.

Exhibit B.

This deed, made this thirteenth day of May, in the year of our Lord one thousand eight hundred and forty-six, by and between Terence Farrelly, of the County and State of Arkansas, of the first part, and Frederic Notrebe, of the same County and State, of the second part, witnesseth, that for and in consideration of the sum of eleven thousand seven hundred dollars, to him in hand paid at and before the ensealing and delivery of these presents, the receipt of which payment is hereby acknowledged, the said party of the first part hath granted, bargained, and sold, and doth, by these presents, grant, bargain, and sell, alien and confirm, unto the said party of the second part, his heirs, and assigns, forever, the following described tracts and parcels of land, to wit: the northeast fractional quarter of fractional section twenty-seven; the southwest quarter of fractional section twenty-two; the southeast quarter of section twenty-one; the west half of section twenty-one; the northwest quarter of

section twenty-eight; the east half of section twenty-eight; the southwest fractional quarter of fractional section twenty-three; all in Township nineteen south, of Range one west, containing in the whole twelve hundred and eleven acres and $\frac{84}{100}$ of an acre of land, lying and being situate in Chicot County, and State of Arkansas; to have and to hold the said described tracts and parcels of land, with all and singular the tenements, hereditaments, appurtenances, and privileges thereunto belonging, or in any manner or wise appertaining, and every part and parcel thereof, unto the only proper use, benefit, and behoof of him the said party of the second part, his heirs and assigns, forever; and the said party of the first part doth moreover for himself and his heirs covenant that he will warrant and forever defend the lands and tenements aforesaid, with the hereditaments, appurtenances, and privileges thereunto belonging, and every part and parcel thereof, free and clear of the claim or claims of all other persons claiming by, *trough*, or under him and against his heirs. It being understood that all the right, title, and interest of said party of the first part in and to the lands and tenements before mentioned, acquired by a deed of conveyance made by William J. Neale, as Commissioner to the said party of the first part, bearing date the twelfth day of May, 1846, is by these presents conveyed to the said party of the second part, his heirs and assigns, forever. Interlined before signing first page the word "covenant," second page the word part.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

T. FARRELLY. [SEAL.]

Witness,
J. B. JONES,
WILFORD GAMER.

State of Arkansas, Chicot County, *ss.*

Personally came before me, William J. Neale, Clerk of the Circuit Court within and for the County aforesaid, duly commissioned and authorized by law to take the acknowledgments of deeds, Terence Farrelly, whose name is signed to the foregoing deed, and to me personally known as the person who executed said deed, and acknowledged the same as his act and deed, for the consideration and purpose therein mentioned and set forth.

In testimony whereof I have hereunto set my hand as Clerk, and affixed the seal of said Court at office in the Town of Columbia, this 13th day of May, A. D. 1846.

W. J. NEALE,
Clerk.

State of Arkansas, County of Chicot, *ss.*

I, William Jerry Neale, Clerk of the Circuit Court, and ex-officio Recorder for the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing, was filed for record in my

office on the 12th day of May, A. D. 1846, and the same is now duly recorded in Record Book "E," pages 448 and 449.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, at Columbia, the 15th day of June, in year of our Lord, one thousand eight hundred and forty-six, and of the Independence of the United States the seventieth.

W. J. NEALE,
Clerk and Ex-officio Recorder.

Exhibit C.

Whereas at the November Term of the Circuit Court of the County of Chicot, in the State of Arkansas, on the 13th day of November, A. D. 1847, in a certain suit then pending in said Court, in Chancery, wherein George C. Breneman was complainant, and Ebenezer Cummins as administrator of the estate of William Cummins, deceased, Mary Cummins, infant daughter and sole heir of said William Cummins, Frederic Notrebe, Terence Farrelly, and William W. Woodfolk, were defendants, it was by the Court aforesaid ascertained, adjudged, and determined, that said complainant, as assignee of George Bungard, on the 19th day of April, A. D. 1842, by the consideration and judgment of the Circuit Court of the United States, for the District of Arkansas, rendered against William K. Inglish and Thomas H. Johnson, who were partners, under the firm of Inglish and Johnson, and Lorenzo Gibson, and William Cummins, the sum of seven thousand six hundred dollars and twenty-four cents, for damages, also all his costs, &c., in that suit expended; that said plaintiff prosecuted out of said Court, on said judgment, a writ of fieri facias, on the 7th day of February, 1843, directed to the Marshal of the United States for said District of Arkansas; that said Marshal, under and by virtue and in execution thereof, and before return day thereof, levied said fi. fa. among other lands on the following lands, as the property of said William Cummins, to wit: the undivided half or moiety of the following described tracts of land, to wit:

The northeast fractional quarter of fractional section twenty-seven (27), the southwest quarter of fractional section twenty-two (22), the west half and southeast quarter of section twenty-one (21), the east half and northwest quarter of section twenty-eight (28), and the southwest fractional quarter of fractional section three (23); all in township nineteen (19) south, of range one west, of the fifth principal meridian, and situate in said County of Chicot. That said lands were not sold under said fieri facias, nor said damages and costs, or any part of either, made. That said William Cummins departed this life some time in the month of April, A. D. 1843. That said Ebenezer is the administrator of the estate of said William Cummins, deceased. That said Mary Cummins is only daughter and sole heir of said William Cummins, and an infant under the age of twenty-one years. That on the 20th day of April, A. D. 1844, the said judgment,

so recovered by said complainant in said Circuit Court of the United States for the District of Arkansas, was, by the consideration and judgment of said Court, revived against said Ebenezer, as administrator of the said William, deceased, &c., against said Inglish and Gibson. That the general and specific lien of said complainant, under and by virtue of said judgment and the levy by said Marshal of said fi. fa. thereunder, still continued unexecuted and unimpaired. That said damages and costs, so recovered by said plaintiff in said Circuit Court of the United States, against said Inglish and Johnson, Gibson, and said William Cummins, and so revived against said administrator as aforesaid, and said other defendants therein, except said Johnson, and all and every part of said damages and costs except the sum of eight hundred dollars, by said plaintiff remitted in said Court, on the 4th day of May, 1842, and the said sum of one hundred and fifty dollars, collected by said Marshal, and said writ of ven. ex. prosecuted out of said Court, on said judgment, collected on the 20th day of November, A. D. 1843, still remains wholly unpaid and unsatisfied. That the said sale by said Marshal, under said writ of venditioni exponas, was wholly void and of no effect. That the said sale by said commissioner, under the said decree in this Court, at which said Farrelly became and was the purchaser of said lands, as the agent of said Notrebe, is wholly void, annulled, and vacated by the judgment of said Supreme Court, in said cause. That said complainant is entitled to have his said general and specific lien on said lands, under and by virtue of said judgment in said Circuit Court of the United States for the District of Arkansas, and the levy by said Marshal of said fi. fa. issued on said judgment as aforesaid, enforced. Wherefore it was, by the said Circuit Court of Chicot County, in Chancery, ordered, adjudged, and decreed, that unless the said defendants, or one of them, do pay to said complainant, on or before the first day of March next, A.D. 1848, the said damages, less the said sum of eight hundred dollars, so by said plaintiff in said judgment remitted, together with interest thereon, from the rendition of said judgment as aforesaid, and also all his costs therein, except the said sum of one hundred and fifty dollars, so collected by said Marshal on said venditioni exponas as aforesaid, that then and in default thereof the said lands be sold at public auction to the highest bidder for cash, on the fourth day of the next term thereafter of the said Court, between the hours prescribed by law for judicial sales, at the court-house door of the County of Chicot, by Johnson Chapman, Esquire, who was thereby appointed a Commissioner to make said sale. It was thereby also further ordered, adjudged, and decreed, that said Commissioner give notice of said sale, by one advertisement put up at the court-house of the said County of Chicot, at least 30 days preceding the said sale, and that out of the proceeds of said sale, he pay, first the expenses thereof, and the costs of said suit, and that he pay the residue of said judg-

ment, and the residue, if any, he bring into court, with his report. And whereas, the said Johnson Chapman, as said Commissioner, did give more than thirty days' notice of said sale, in complete compliance with said decree, by posting up one advertisement at the court-house door of said county. And whereas, the *the* whole amount adjudged by said decree still remains unpaid on said day of sale, in said decree fixed and appointed, I, the said Johnson Chapman, as such Commissioner, as aforesaid, did proceed, on the eleventh day of May, A.D. 1848, that being the fourth day of next term of said court following said decree, and between the hours prescribed for judicial sales, to offer and expose the said undivided half or moiety of the hereinbefore described tracts or parcels of land for sale at public auction to the highest bidder, for cash, at the court-house door of said County of Chicot, in Columbia, in accordance with the mandate of said decree, at which sale, then and there so made, Frederic Notrebe bid and offered for said undivided half or moiety of the hereinbefore mentioned and described tracts or parcels of land the sum of three thousand five hundred dollars, and that being the highest and last bid, the whole of said undivided half or moiety of said hereinbefore mentioned and described tracts of land were then and there by me struck off to the said Frederic Notrebe as the purchaser thereof.

Now, therefore, in consideration of the premises and of said sum of three thousand dollars, to me, as such Commissioner, in hand paid by the said Frederic Notrebe, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, I, the said Johnson Chapman, as Commissioner as aforesaid, by virtue of the authority upon me conferred by the said decree, do hereby grant, bargain, sell, alien, transfer, confirm, and convey, unto the said F. Notrebe and his heirs, all and singular the undivided half or moiety of the hereinbefore mentioned and described tracts or parcels of land, with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, to have and to hold said lands and tenements, with the hereditaments and appurtenances, unto the said Frederic Notrebe and his heirs forever.

In witness whereof, I, the said Johnson Chapman, Commissioner as aforesaid, do hereunto set my hand and affix my seal, this eleventh day of May, A.D. 1848.

[SEAL.] JOHNSON CHAPMAN,
Commissioner.

Executed in our presence as witnesses.

Chicot, sct.

In the Chicot Circuit Court, at May Term, May 12th, 1848.

Be it remembered, that on this day appeared in open Court before the Judge thereof, Johnson Chapman, who has executed the fore-

going, and as Commissioners heretofore appointed by the Court, to make the sale in said deed set forth, and here in open Court acknowledged that he had voluntarily executed the annexed and foregoing, and as such commissioner, for the uses, purposes, and considerations therein expressed, and desired the same to be certified to; such is now here accordingly done.

In testimony whereof, I, Calvin Ashbrook, have hereunto set my hand, as Clerk of the said Circuit Court, and affixed the seal of said Court, this said 12th day of May, 1848.

CALVIN ASHBROOK,
Clerk.

By JO. B. STEDMAN,
Deputy Clerk.

State of Arkansas, County of Chicot, *ss.*

I, Calvin Ashbrook, Clerk of the Circuit Court, and ex-officio Recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 12th day of May, A. D. 1848, and the same is now duly recorded in Record Book F, pages, 390, 91, 92, and 93.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, at Columbia, the 25th day of May, in the year of our Lord one thousand eight hundred and forty-eight, and of the Independence of the United States the 72d.

CALVIN ASHBROOK,
Clerk and Ex-officio Recorder.

By JO. B. STEDMAN,
Deputy Clerk.

Exhibit D.

This deed, made this twenty-eighth day of February, in the year of our Lord one thousand eight hundred and fifty, by and between Mary Feliciti Notrebe, widow, and Edward C. Morton and Mary his wife, formerly Mary F. Cummins, heirs and sole devisees of Frederic Notrebe, deceased, all of the County of Arkansas and State of Arkansas, of the first part, and William W. Woodfolk, of Nashville, in the State of Tennessee, of the second part, Witnesseth, that whereas the said Frederic Notrebe in his lifetime bargained and sold, for the sum and consideration of twelve thousand one hundred and fifty-nine dollars, to the said party of the second part, his heirs and assigns, the following tracts or parcels of land, designated on the surveys of the public lands of the United States, to wit, the northeast fractional quarter of section number twenty-seven (27), the southeast quarter of section number twenty-eight (28), the northeast quarter of section number twenty-eight (28), the northwest quarter of section number twenty-eight (28), the southwest quarter of section number twenty-two (22), the southeast quarter of section number twenty-one (21), the southwest quarter of section number twenty-one (21), and the

northwest quarter of section twenty-one (21), all in Township nineteen south, of Range one west, of the fifth principal meridian, lying and situate in the County of Chicot and State of Arkansas, and containing together in the whole eleven hundred and fifty-eight acres of land, more or less, as will more fully appear from the title bond of the said Frederic, embracing the said several tracts or parcels of land and two other tracts adjoining the same, conveyed by separate deed of this date to the said party of the second part, and which bond is made duly of record in the office for recording of deeds in the said County of Chicot; and the said party of the second part having now fully paid the said sum and consideration beforenamed, and the said parties of the second part, in order to comply with the covenants of the said Frederic, made with the said party of the second part in this behalf, it is further witnesseth, that in consideration of the premises and for and in consideration of the said sum of twelve thousand one hundred and fifty-nine dollars lawful money of the United States, paid before the ensealing and delivery of these presents, the receipt of which payment is hereby acknowledged, the said parties of the first part hath granted, bargained, and sold, and doth by these presents grant, bargain, and sell, alien, and confirm, unto the said party of the second part, his heirs and assigns, forever, said several tracts and parcels of land beforementioned and described with their appurtenances, to have and to hold the same with all and singular the tenements, appurtenances, hereditaments, and privileges thereunto belonging or in any manner or wise appertaining, unto the only proper use, benefit, and behoof of him, the said party of the second part, his heirs and assigns, forever. And the said party of the first part doth moreover, for themselves and their heirs, covenant and agree to and with the said party of the second part, his heirs and assigns, that they will warrant and forever defend the lands and tenements hereby conveyed, and every part and parcel thereof with their appurtenances, against the claim or claims of all other persons whomsoever lawfully claiming the same.

In witness whereof, the said parties of the first part have hereunto set their hand and seal, the day and year first above written, the words of the second interlined before signing, also the word his.

MARY FELICITI NOTREBE. [SEAL.]
EDWARD C. MORTON. [SEAL.]
MARY F. MORTON. [SEAL.]

Witness:
F. MICHEL,
WILLIAM MAXWELL.

State of Arkansas, Arkansas County, *ss.*

Be it remembered, that on the day of *the day* hereof, personally came before me, William Maxwell, an acting Justice of the Peace,

duly commissioned, in and for said County, Mary Felicite Notrebe, Edward C. Morton, and Mary, his wife, to me personally well known as the persons whose names are signed to the foregoing deed or instrument of writing, and acknowledged the same, severally, their act and deed, for the consideration and purpose therein mentioned and set forth; she, the said Mary F. Morton, being by me first examined, separate and apart from her said husband, and the contents of said deed explained and made known to her, acknowledged that she had executed the same voluntarily and of her own free will, without compulsion, or the undue influence of her said husband, and did not wish to retract. I therefore certify the same for record.

Given under my hand, this 28th day of February, A.D. 1850.

WILLIAM MAXWELL,
Justice of the Peace.

Exhibit E.

This deed, made this, the 28th day of February, in the year of our Lord one thousand and eight hundred and fifty, by and between Mary Feliciti Notrebe, widow, Edward C. Morton, and Mary, his wife, formerly Mary F. Cummins, heirs and sole devisees of Frederic Notrebe, deceased, and Terence Farrelly, of the County of Arkansas, and State of Arkansas, of the first part, and William W. Woodfolk, of Nashville, and State of Tennessee, of the second part: witnesseth, that whereas, the said Frederic Notrebe, in his lifetime, for the sum and consideration of three thousand three hundred and sixty dollars, bargained and sold to the said party of the second part, the following tracts or parcels of land, designated in the surveys of the public lands of the United States, to wit: the northeast quarter of section number twenty-one (21), and the northwest quarter of section number twenty-two (22), in Township nineteen south, of range one west, of the fifth principal meridian, lying and situate in the County of Chicot and State of Arkansas, containing three hundred and twenty acres of land, more or less, as will more fully appear on reference to the bond for title given by the said Frederic to the said party of the second part, embracing the above and other adjoining tracts of land, conveyed by the said Mary Feliciti, and Edward C. Morton and wife, by another deed of this date, and the said bond being made duly of record, in the office for the recording of deeds, in said County of Chicot; and whereas, the said Terence having, by purchase at public sale, under a writ of ven. ex., become the owner of the interest of William Cummins, deceased, in the aforesaid tracts or parcels of land, as will appear on reference to the deed of Joseph B. Thredgild, Sheriff of the said County of Chicot, duly executed and made, on record in the office for recording of deeds in said County, in Book G, pages 3, 4, and 5, and the said party of the second part having now paid the full amount of the consideration before named, and the parties of this deed of the first part being willing that the covenants

made by the said Frederic, in this behalf, should be complied with. It is further witnesseth, that in consideration of the premises, and for and in consideration of the said sum of three thousand three hundred and sixty dollars, lawful money of the United States, paid at and before the ensealing and delivery of these presents, the receipt of which payment is hereby acknowledged, the said parties of the first part hath granted, bargained, and sold, and doth by these presents grant, bargain, and sell, alien, and confirm unto the said party of the second part, his heirs and assigns, forever, the said described tracts and parcels of land, with the tenements and appurtenances thereunto belonging. To have and to hold the same, with all and singular, the tenements, hereditaments, appurtenances, and privileges thereunto belonging, or in any manner or wise appertaining, unto the only proper use, benefit, and behoof of him, the said party of the second part, his heirs and assigns, forever; and the said parties of the first part doth, moreover, for themselves and their heirs, covenant and agree to, and with the said party of the second part, his heirs and assigns, to warrant and forever defend the tracts of land hereby conveyed, and every part and parcel thereof, with their appurtenances, against the claim or claims of all other persons whomsoever, lawfully claiming the same. In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

MARY FELICITI NOTREBE. [SEAL.]
EDWD. C. MORTON. [SEAL.]
MARY F. NOTREBE. [SEAL.]
Witness: T. FARRELLY. [SEAL.]
F. MICHEL.
WILLIAM MAXWELL.

State of Arkansas, Arkansas County, *ss.*

Be it remembered, that on the day of the date hereof, personally came before me, William Maxwell, an acting Justice of the Peace, duly commissioned, in and for said County, Mary Feliciti Notrebe, Edward C. Morton, and Mary, his wife, and Terence Farrelly, to me personally well known as the persons whose names are signed to the foregoing deed or instrument of writing, who severally acknowledged the same as their actual deed, for the consideration and purpose therein mentioned and set forth; she, the said Mary F. Morton, being first examined by me, separate and apart from her said husband, and the contents of said deed explained and made known to her, acknowledged that she had executed the same voluntarily, of her own free will, without compulsion, or the undue influence of her said husband, and did not wish to retract. I therefore certify the same for record.

Given under my hand this 28th day of February, A.D. 1850.

[SEAL.] WILLIAM MAXWELL,
Justice of the Peace.

Exhibit F.

This deed, made the 30th day of October, in the year of our Lord one thousand eight hundred and forty-nine, by and between Joseph B. Thredgill, Sheriff of the County of Chicot, and State of Arkansas, of the first part, and Terence Farrelly, of the County of Arkansas and same State, of the second part, witnesseth: that whereas Frederic W. Trapnall, who sued for the use of Trapnall & Cocke, on the 26th day of September, A. D. 1842, at the Circuit Court, at the County of Pulaski, in said State, recovered against William Cummins, the sum of one hundred and twenty-one dollars debt, and sixteen dollars and sixteen cents damages, besides all his costs sustained in suit; and whereas, after the *condition* of said judgment, the said William Cummins departed this life, and administration of his estate had been granted unto Ebenezer Cummins, who was on the day and year next hereafter mentioned, acting as such administrator; and whereas, also on the 8th day of July, A. D. 1844, it was considered and adjudged by said Court, that the judgment aforesaid be revived against the said Ebenezer, as such administrator, and the lien thereof continued; and that said plaintiff, for the use aforesaid, should have execution against the said Ebenezer, as such administrator, for as well the debt, damages, and costs aforesaid, as also for all the costs expended by him about the revival of said judgment, to be made and levied of the goods and chattels of the said William, in the hands of the said Ebenezer, as such administrator to be administered, and all the costs of said suit and revival of said judgment, amounted to the sum of eighteen dollars; and whereas, the said plaintiff, on the 14th day of December, A. D. 1848, sued out of the office of the Clerk of the said Pulaski Circuit Court, an alias fieri facias writ of execution, for the recovery of the debt, damages, and costs aforesaid, returnable on the second of the April Term of said Circuit Court, A. D. 1849, which said writ of execution was levied by the Sheriff of the County of Chicot, on the following described property, to wit, all the right, title, and interest of William Cummins, in and to the northeast quarter of section 21, and the northwest quarter of section 22, both in Township nineteen south, of range one west, lying and situate in the said County of Chicot, and State of Arkansas, which said levy was made on the 1st day of January, A. D. 1849, and said fi. fa. writ of execution returned to said Pulaski Circuit Court unsatisfied, without sale of the said property so levied on; and whereas, on the 29th day of August, A. D. 1849, a writ of venditioni exponas, issued from the Clerk's office of the Pulaski Circuit Court aforesaid, directed to the Sheriff of the County of Chicot, commanding him, the said Sheriff, to expose for sale and sell the said property so levied on as aforesaid, and cause to be made the said damages and costs; which said writ of ven. ex. came to the hand of the said party of the first part as sheriff, on the 13th day of Sep-

tember, A. D. 1849, who, in pursuance of said writ, caused the said lands so levied on to be advertised, for the time and in the manner prescribed by law; and on the 29th day of October, A. D. 1849, being Monday, and the first day of the Term of the Circuit Court, in and for said County of Chicot, before the court-house door, and between the hours appointed by law for judicial sales, the said party of the first, in his capacity of sheriff, offered said property or lands, so levied on and advertised as aforesaid, at public vendue, at which time and place and public vendue, the party of the second part being the highest and last bidder, became the purchaser for the sum and consideration of fifty dollars. Wherefore this deed witnesseth, that in virtue of the premises, and for and in consideration of the said sum of fifty dollars, good and lawful money of the United States, to him in hand paid at and before the ensealing and delivery of these presents, the receipt of which is hereby acknowledged, The said party of the first part hath granted, bargained, and sold, and doth by these presents grant, bargain, and sell unto the said party of the second part, his heirs and assigns, forever, all the right, title, and interest of the said William Cummins, in and to the said north-east ¼ of section 21, and the northwest ¼ of section 22, both in Township 19 south, of Range 1 west, with the hereditaments and appurtenances therewith belonging or appertaining, lying and situate in the County of Chicot, and State of Arkansas, to have and to hold the same to the only proper use, benefit, and behoof of him, the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said party of the *of the* first part hath hereunto, in his official capacity of sheriff, set his hand and seal, the day and year first above written. Interlined before signing the words,—debt, writ of, Circuit Term of the, become the purchaser, part.

JO. B. THREDGILL, [SEAL.]
Sheriff.

Witness,
W. J. NEALE.
Jo. B. STEDMAN.

State of Arkansas; County of Chicot, *ss.*

In Chicot Circuit Court, Oct. 30th, 1849, personally appeared Joseph B. Thredgill, sheriff of said county, who acknowledged, in open Court, that he had, in his official capacity of sheriff, signed, sealed, and delivered the foregoing deed, as and for his act and deed, for the consideration and purpose therein mentioned and set forth.

In testimony whereof, I, Jos. B. Stedman, Clerk of the Circuit Court, and for said county, have hereunto set my hand and official seal, this 30th day of October, A. D. 1849.

JO. B. STEDMAN,
Clerk.

State of Arkansas; County of Chicot, *ss.*

I, Joseph B. Stedman, Clerk of the Circuit Court, and ex-officio Recorder for the county aforesaid, do hereby certify that the annexed and aforegoing instrument of writing was filed for record in my office, on 1st day of November, A. D. 1849, and the same is now duly recorded in "Record Book G," pages 3, 4, and 5.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, at Columbia, the 16th day of November, in the year of our Lord one thousand eight hundred and forty-nine, and of the independence of the United States 74th year.

JO. B. STEDMAN,
Clerk and Ex-officio Recorder.

Filed 11th March, 1852.

Attest, WM. FIELD,
Clerk.

In the Circuit Court of the United States, for the Eastern District of Arkansas, on the Chancery side thereof: in Vacation, Oct. 22d, 1853.

WILLIAM W. WOODFOLK, Complainant,
v.
HENRY L. BISCOE and Others, Trustees of the Real Estate Bank of Arkansas, TERRENCE FARRELLY and Others, Executors of the last Will and Testament of Frederic Notrebe, deceased, and the Widow and Heirs of the said Frederic, deceased, Defendants. } In Chancery.

The replication of said complainant to the separate answer of Terrence Farrelly, one of the executors of the last will and testament of F. Notrebe, deceased, and to the joint and several answers of Edward C. Morton and Mary his wife, to said complainant's bill of complaint.

And said repliant, saving and reserving, &c., for replication unto said answers, says, that he will aver and maintain his said bill to be true, certain, and sufficient in law to be answered unto; and that the said answers of said defendants, and each of them, are untrue, uncertain, and insufficient to be replied unto, without that any other matter or thing in said answers or either of them contained material or effectual in law, to be replied unto by this repliant, and not herein replied unto, confessed, and avoided, traversed or denied, is true. All which this repliant is ready to aver and prove, &c.

TRAPNALL,
For Complainant.

Filed 7th day of Nov. 1853.

WM. FIELD,
Clerk.

In the Circuit Court of the United States for the Eastern District of the State of Arkansas, at the April term thereof, A.D. 1855.

WM. W. WOODFOLK, complainant,
v.
FREDERICK NOTREBE'S Heirs and Representatives and Others, defendants. } In Chancery.

The replication of said complainant to the amended and supplemental answer of Edward C. Morton and Mary F. his wife, to the bill of complaint herein.

And this repliant, saving and reserving, &c., for replication unto said answer, says that he will aver and maintain his said bill to be true, certain and sufficient in law to be answered unto, and that the said answer of said defendants, Edward C. and Mary his wife, is untrue, uncertain, and insufficient in law to be replied unto, without that any other matter or thing in said answer material or effectual in law to be replied unto by this repliant, and not herein not replied unto, confessed, and avoided, traversed or denied, is true; all which this repliant is ready to aver and prove, &c.

PHIL. TRAPNALL,
Solicitor for Complainant.

Filed 9th April, 1855.

WM. FIELD,
Clerk.

Exhibit No. 1.

State of Arkansas, County of Chicot.

Pleas before the Honorable William H. Sutton, Judge of the Circuit Court of Chicot County, Arkansas, at the court-house in the town of Columbia, on the 14th day of November, A. D. 1845, on the Chancery side thereof; wherein,

"SAM. C. ROAN, EBENEZER WALTERS, LAMBERT REARDON, HENRY L. BISCO, WILLIAM F. MOORE, JOHN PRESTON, Jr., ANTHONY H. DAVIES, SANFORD C. FAULKNER, SILAS CRAIG, GEORGE HILL, JAMES H. WALKER, ENOCH J. SMITH, and JOHN DRENNEN, surviving Trustees of the Real Estate Bank of the State of Arkansas," complainants,
v.
"EBENEZER CUMMINS, as administrator of all and singular the goods and chattels, rights and credits, which were of WILLIAM CUMMINS, deceased, FREDERIC NOTREBE, MARY CUMMINS, GEORGE C. BRENEMAN, and SAMUEL E. JONES," defendants. } Title.

Be it remembered, that heretofore, to wit, on the 27th day of June, 1843, came the complainant, and filed in the Clerk's office of

said circuit his bill of complaint against said defendants; which said bill of complaint are in the following words and figures, to wit:

"To the Honorable the Judges of the Chicot Circuit Court, in the State of Arkansas, sitting in Chancery, Samuel C. Roan, Ebenezer Walters, Lambert Reardon, Henry L. Bisco, William F. Moore, John Preston, Jr., Anthony H. Davies, Sanford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, Lawrence N. Clarke, John Drennen, and Robert S. Gibson, who sue as trustees of the Real Estate Bank of the State of Arkansas, and as successors and survivors in said trusteeship of Carey A. Harris, deceased, and of James S. Conway and Daniel T. Wetter, removed, file this their bill of complaint against Ebenezer Cummins, as administrator of all and singular the goods and chattels, rights and credits, which were of William Cummins, late of the County of Pulaski, deceased, who died intestate, Mary Cummins, infant daughter and sole heir of said William Cummins, Frederick Notrebe, George C. Breneman, and Samuel E. Jones, defendants; and thereupon your orators complain and say, that on the 22d day of July, A.D. 1837, the said Frederic Notrebe and William Cummins, having theretofore jointly subscribed for three hundred shares of the capital stock of said Bank, and, in order to secure said stock and the repayment of the moneys to be borrowed by them under the charter of said Bank, upon account of their stock therein, made and executed their certain deed of mortgage of that date to said Bank, whereby they conveyed to said Bank their lands hereafter described, whereof they were owners in fee simple, to have and to hold the same to said Bank or its assigns forever; which lands, so conveyed, are correctly set forth in the following abstract, to wit:

Northeast frac. quarter section 27.
Southwest quarter frac. section 22.
Southeast quarter of section 21.
West half of section 21.
Northwest quarter of section 28.
East half of section 28.
Southwest frac. quarter of frac. section 23.

All in township 19 south, of range 1 west, lying and situate in said County of Chicot, and containing together $1211\frac{84}{100}$ acres of land; and said lands were by said deed conveyed to said Bank, with all the rights, improvements, buildings, ways, hereditaments, and appurtenances thereof, or thereto in anywise belonging or attached; upon the condition, however, that as said Frederic Notrebe and William Cummins had on that day executed their bond, payable to said Bank, for the sum of thirty thousand dollars, lawful money of the United States, payable on the twenty-sixth day of October, A. D. 1861, and drawing interest at the rate or five per centum per annum, payable half yearly, until the principal should fall due; which bond

had been executed for so much stock so subscribed for by them as aforesaid. Therefore, if said mortgagees, their heirs, assigns, or legal representatives, should well and truly pay or cause to be paid, all moneys which they should receive from said Bank, on account of subscriptions for stock therein, and the interest due on stock moneys, according to the requisitions and regulations of said Bank; and if they, their heirs or assigns, should well and truly pay or cause to be paid, to whom it might be due, so much or such sum of the bonds of said State, issued by said State in favor of said Bank, and the interest on said bonds of the State or such part thereof as should be equal to the stock allowed and granted to them or to their heirs or assigns, and should also pay or cause to be paid to said bank, their said bond for thirty thousand dollars, and the interest accruing thereon, according to the tenor and effect, true intent and meaning of said bond, then said deed was to be void, else to remain in full force; and it was agreed that said lands and appurtenances were to remain in possession of the mortgagees until legally sold to discharge said obligation and liabilities; which deed was duly executed, acknowledged, and recorded; all which, by a copy of said deed, which is herewith exhibited, marked A., and by a copy of said bond in said deed referred to, which is herewith exhibited, marked B., and both which are prayed to be taken as part of this bill, will more fully and at large appear.

Your orator further represents, that on the 22d day of April, A. D. 1840, for the purpose of further securing said stock, and curing certain supposed defects in the recording of said deed, a certain other deed of mortgage, to the same form and effect, and upon the same conditions, in all respects, conveying the same land to said Bank, as in said first deed is contained, was prepared, intended to be executed by said Notrebe and Cummins, but duly executed and acknowledged by said Cummins alone, and never recorded, as by a copy thereof, and a copy of the bond therein referred to, which are herewith exhibited, marked respectively C. and D., and prayed to be taken as parts of this bill, will more fully appear. Your orators further represent, that on the 16th day of September, A. D. 1837, the Board of Managers provided for by said charter completed their labors, and awarded to the different subscribers for stock in said Bank, twenty-two thousand five hundred shares, and among them, to said Frederic Notrebe and William Cummins, jointly, three hundred shares, and on the same day completed and filed in the office of the Secretary of State of this State, the schedule required by said charter, therein naming said Notrebe and Cummins as joint stockholders, and awarding to them jointly three hundred shares of stock, whereby said Notrebe and Cummins then became and were stockholders in said Bank to that number of shares, the corporate existence of said Bank commenced, and said first mortgage was then in law and fact delivered.

Your orators further represent, that under and by virtue of the

seventeenth section of said charter, the said Notrebe and Cummins jointly borrowed of said Bank, of their said stock, the sum of fifteen thousand dollars, to wit, on the 19th day of March, A. D. 1840, seven thousand nine hundred dollars, and on the 30th day of March, 1840, the sum of seven thousand dollars, and executed therefor on each of said days, a bond for the amount so then borrowed, the first of which stated the sum therein mentioned, as have been received by said Cummins, and the second stated the sum therein mentioned to have been received by said Notrebe, by each of which, signed and sealed by each of them, reciting that they were as owners of three hundred shares of said stock, entitled to a credit of fifteen thousand dollars, of which they had, on that day, drawn seven thousand five hundred dollars, they bound themselves, their heirs, administrators, or assigns, to pay said Bank said sum, at the banking-house of said Bank in Little Rock, in and by equal annual instalments, so that the whole sum should be paid on or before the 25th day of October, 1856, and also to pay annually in advance eight per cent. interest per annum, on the part of said sum remaining unpaid, at the end of each year, and which by copies of said two bonds, and herewith exhibited, marked respectively E, and F, in the order of their date, and prayed to be taken as part of this bill, will more fully appear.

Your orator further represents, that on the second day of April, A. D. 1842, the said Real Estate Bank, by her deed of that date duly executed, acknowledged and recorded, conveyed to your orators, Samuel C. Roan, Henry L. Bisco, William F. Miller, John Preston, Jr., Anthony H. Davies, Sanford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, Lorenzo N. Clark, John Drennen, and Robert S. Gibson, jointly with said Carey A. Harris, James S. Conway, and Daniel T. Welter, as trustees, and to their successors and survivors, all and singular, the estate, real and personal property in certain rights, in credits and effects of said Bank of every name, nature, and description whatever, in trust for the payment of all its debts, and liabilities, in a certain manner and order therein prescribed, among which assets so conveyed were all of said lands and liabilities of said Notrebe and Cummins, all which will more fully appear by a copy of said deed, which will in due time be exhibited, marked G, and prayed to be taken as part of this bill.

Your orators further represent, that soon after the execution of said deed, the said Carey A. Harris departed this life, and the vacancy so occasioned not being filled within three months thereafter, and said James S. Conway and Daniel T. Welter failing to give bond, as requested by said deed, the Hon. the Judge of the Pulaski Circuit Court, did, on the 3d day of January, A. D. 1843, remove said James S. Conway and Daniel T. Welter, and appoint in their stead, and in that of said Carey A. Harris, your orators, Ebenezer Walters, Lambert Reardon, and James H. Walker, who, with the residue of your orators, are still the legal trustees of said Bank.

Your orators further represent, that on the seventh day of April, A. D. 1843, the said William Cummins departed this life, in the County of Pulaski aforesaid, intestate, and that administration of all and singular his goods and chattels, rights and credits, has since been, by the prior authority in said County of Pulaski, granted to the defendant, Ebenezer Cummins, who has taken on himself the burden of said administration, and that the defendant, Mary Cummins, an infant of tender age, daughter of said William, his sole heir.

Your orators further represent, that said southwest fractional quarter of said Section 23, was originally owned by said Cummins, through whom said Frederic Notrebe derived title to one undivided half thereof; previous thereto, on the 22d day of October, A. D. 1834, the said William Cummins executed a certain instrument of writing, by which he acknowledged that he had located said last-mentioned tract of lands, together with the southeast fractional quarter of same Section 23; the south half of the northeast quarter of same Section 23; the northwest fraction of northwest frac. quarter of Section 24; and the south half of the southwest frac. quarter of Section 13, all in Township 19 south, of Range 1 west, containing $29\frac{64}{100}$ acres, with a certain claim that the defendant, Samuel E. Jones, had owned certain improvements on said lands; that before the entry of said lands, it was agreed between said Cummins and said Jones, that said Cummins should locate the same for himself and said Jones jointly, each being equally interested in the lands, and each to pay an equal proportion of the costs of the improvements, and the part of the lands; that these payments had been made; that said Jones was an equal owner with said Cummins of said lands; and that when a division should be made, said Cummins should have his part laid off of those lands lying lowest down the river (which would include in his share said southwest frac. quarter of Sec. 23, the same being lowest down the River Mississippi of all said lands, and not equal to one-half the whole value of said lands); that said lands should be divided according to their value; and said Cummins also agreed to quitclaim and convey to said Jones such lot as said Jones should select, twenty rods front by twenty-five rods in depth, fronting on the river in the "town fraction" of said lands, provided such lot should be selected fifty rods above the town fraction of said town fraction, for the purpose of a residence (of the meaning whereof your orators are utterly ignorant), and said Cummins also bound himself to convey to said Jones the part agreed on to be equal in value to one-half, and that if the parties would not agree, the lands should be divided by three disinterested persons, all which will more full appear by a copy of said instrument, which is herewith exhibited, marked H, and prayed to be taken as part of this bill.

Your orators further represent, that they do not know nor are informed whether said Cummins ever gave said Jones any legal title to any specific portion of said lands; but finding no conveyance of

any part thereof on record, they suppose that he did not, so that they represent that said Cummins, up to the time of his death, held one half of said lands as a trustee for said Jones, and said Jones is entitled to a division thereof, according to said instrument, and not otherwise, and in such division can obtain no part of said southwest fractional quarter of Sec. 23, which must necessarily fall in said Cummins's share of said lands. Nor do they know anything in regard to said lot of 25 rods square, except what they gather from the fact of said instrument, the confusion and ambiguity whereof, in that respect, is so great that they are unable ever to press at the meaning or at the intended locality of said lot; but as said Cummins has, in a certain deed to said Notrebe, ascertained that four acres had been sold off the eastern part of said fract. quarter, they think it probable that the same four acres are the lot aforesaid, and desire to be by said Jones enlightened as to that matter, averring that there is no other conveyance of said lot, or of said four acres, except what may possibly be contained in said instrument.

Your orators further represent, that they know of no lien on said lands or any part thereof, except a judgment recovered by the defendant, George C. Breneman, on the eighteenth day of April, 1842, in the Circuit Court of the United States, for the Arkansas District, against William K. Inglish, Thomas H. Johnson, Lorenzo Gibson, and the said William Cummins, for $7600 24 cents, damages and costs of suit, of which damages he remitted, on the 4th day of May, 1842, the sum of $881 48 cents, leaving still due $6718 76 cents, which is wholly unsatisfied, as they are informed.

Your orators further represent, that on said first-mentioned stock bond, the amount whereof ($7500) was secured by said Cummins, nothing whatever has been paid, and that on said other stock bond for $7500, the following payments have been made, to wit: April 1st, 1831, an instalment of principal of $468 75 cents, and interest in advance for one year on the residue; March 15th, 1842, a further instalment of the same amount, and advance interest on the residue for one year from March 30, 1842, whereby there was due, and should have been paid on said bond, on the 30th of March, A. D. 1843, another like instalment, and advance interest at the rate of eight per centum per annum, from that date to October 25th, 1843, on which day in each year the instalments are by said bond required to be paid; and they further represent that nothing whatever has been paid on said bond for $30,000.

And your orators well hoped that said Ebenezer Cummins, as such administrator, or some other one of said defendants, would have paid up and settled the arrearages so due on said bonds, as in equity and conscience they should have done.

But now so it is, may it please your Honor, that the arrearages and amounts, specially above stated, shall remain wholly unpaid, wherefore, and as your orators can have adequate relief only in a

Court of Equity, to the end, therefore, that the defendants may on oath, full, true, direct, and perfect answers make, to all and singular the matters and things hereinbefore alleged, as fully and particularly in every respect as though the same were here again repeated, and were thereunto specially interrogated, and especially that the said Samuel E. Jones may answer whether said lands, entered for the joint benefit of him and said Cummins, were ever divided between them, and if so, how and when, and if by any instrument of writing, that he exhibit the same; and whether said southwest fractional quarter of section 23 has not always been, since its entry, the sole property in law and equity of said Cummins, or of said Cummins and Notrebe; and whether in such division, the same would not respectively fall to said Cummins; what is the locality of said lot of twenty-five rods square; has it ever been selected, and when; and that by decree it may be adjudged, that unless said arrearages are paid by a day certain, the lands aforesaid shall be sold to pay the same, or such part thereof as may be proper, and the equity of redemption of the defendants barred; and that your orators may have such other and further relief as may be consistent with equity, your orators pray process of subpœna against said Ebenezer Cummins, as administrator, to the County of Pulaski, against said Frederic Notrebe, and Mary Cummins, to the County of Arkansas, and against said Samuel E. Jones, to the County of Chicot, with order of publication against said George C. Breneman, who is a non-resident of this State; and your orators will ever pray, &c.

(Signed) PIKE & BALDWIN.

Pulaski, *ss.*

I, Albert Pike, do solemnly swear, that the abovenamed defendant, George C. Breneman, is a non-resident of this State, and resides, as I am informed, in the State of Mississippi.

(Signed) S. C. FAULKNER.

Sworn to and subscribed before me, Johnson Chapman, Clerk of the Circuit Court of Chicot County, Arkansas, this 27th day of June, A. D. 1843.

JOHNSON CHAPMAN,
Justice of the Peace.

Exhibit A.

This deed of mortgage, made and delivered this twenty-second day of July, in the year of Christ, eighteen hundred and thirty-seven, by and between Frederic Notrebe, of the County of Arkansas, and William Cummins, of the County of Pulaski, and State of Arkansas, of the first part, and the Real Estate Bank of the State of Arkansas, of the second part, witnesseth: That the said party of the first part, for and in consideration of the stock taken and allowed to the said

parties of the first part, in the Bank aforesaid, and the benefit hereinafter stated, have this day granted, bargained, and sold, and by these presents doth grant, bargain, sell, alien, transfer, and convey to the said Real Estate Bank, of the State of Arkansas, the party of the second part, the following described tracts or parcels of land, lying and situate in the County of Chicot, and State of Arkansas, and known and designated on the plats of the survey of public lands as the northeast fractional quarter of fractional section twenty-seven, containing thirty-eight $\frac{88}{100}$ acres, the southwest quarter of fractional section twenty-two, the southeast quarter of section twenty-one, the west half of section twenty-one, the northwest quarter of section twenty-eight, the east half of section twenty-eight, the southwest fractional quarter of fractional section twenty-three, containing fifty-three acres, all said tracts being in Township nineteen south, of Range one west, of the fifth principal meridian, containing in whole, according to survey, twelve hundred and eleven $\frac{88}{100}$ acres of land. To have and to hold the said tract of land, with all and singular the rights, improvements, buildings, ways, hereditaments, and appurtenances thereof, or thereto in any wise belonging or attached, to the said Real Estate Bank of the State of Arkansas, or its assigns, forever; and the said parties of the first part, for themselves, their heirs and legal representatives, covenant to and with the said party of the second part, and its assigns, that they have good and sufficient title to the above-described land, with all and singular the appurtenances thereof, and that they, their heirs or legal representatives, will warrant and defend the title, possession, and enjoyment of said tract, with the appurtenances thereof aforesaid, to the said party of the second part, or its assigns, against the claim or claims or lawful demands of any and all persons whatever, and against their heirs or assigns forever.

The above deed is made, however, on the following express and well-understood conditions, that whereas the said parties of the first part have this day executed their bond, payable to the said Real Estate Bank of the State of Arkansas, for the sum of thirty thousand ($30,000) dollars, lawful money of the United States, payable on the 26th day of October, in the year eighteen hundred and sixty-one, and drawing interest on said sum at the rate of five per cent. per annum, the said interest being payable half-yearly, until the principal falls due, the said bond having been executed for so much stock subscribed by the said parties of the first part, to and in the said Real Estate Bank of the State of Arkansas.

Now if the said parties of the first part, their heirs, assigns, or legal representatives, shall well and truly pay, or cause to be paid, all money which the said parties of the first part may receive from said Bank, on account of subscription for stock in said Bank, and the interest due on said moneys, according to the requisitions and regulations of said Bank, and if the parties of the first part, their

heirs or assigns, shall well and truly pay, or cause to be paid, to whom it may be due, so much or such sum of the State of Arkansas, issued by said State in favor of Bank aforesaid, and the interest on said bonds of the State, or such part thereof as shall be equal to the stock allowed and granted to them, the said parties of the first part, or to their heirs or assigns, and shall also well and truly pay, or cause to be paid, the said bond to the said Bank above recited and described, executed by the parties of the first part, for stock in said Bank, and interest accruing thereon, according to the tenor and effect, true intent and meaning of said bond, then the above deed to be void, and of no effect, otherwise to remain in full force and virtue. It is distinctly agreed and understood, between the parties of this mortgage, that the said lands, tenements, and hereditaments, with all and singular their appurtenances aforesaid, are to be enjoyed by, and remain in the possession and occupancy of the parties of the first part, until the same shall be legally sold to discharge and satisfy the above-recited obligation and liabilities.

In testimony whereof the said parties of the first part have hereunto set their hands and seals, on the day and year first above written.

(Signed) FREDERIC NOTREBE. [SEAL.]
WM. CUMMINS. [SEAL.]

Executed in the presence of
H. J. McKENZIE,
CHAS. F. NOTREBE,
BENJ. JOHNSON.

County of Arkansas, State of Arkansas.

This day personally appeared before me, Benjamin L. Hallow, an acting Justice of the Peace, in and for the county aforesaid, Frederic Notrebe and William Cummins, both to me well known, who severally acknowledged that they had executed the foregoing deed for the use and purpose therein expressed. Given under my hand, this 24th July, 1837.

(Signed) R. L. HALLER, [SEAL.]
Justice of the Peace.

State of Arkansas, County of Chicot.

I, James Blain, Clerk of the Circuit and County Courts, and ex-officio Recorder within and for the County aforesaid, do hereby certify that the within mortgage was filed for record in my office, October the 2d, A. D. 1837, and the same is duly recorded in Record Book C, pages 21, 22, and 23. In testimony whereof I have hereunto set my hand and affixed the seal of my office at Columbia, this 23d day of October, in the year of our Lord one thousand eight hun-

dred and thirty-seven, and of the Independence of the United States the sixty-second, and of the State of Arkansas the 2d year.

(Signed) JAMES BLAIN,
Clerk and ex-officio Recorder.

State of Arkansas, County of Pulaski, *sct.*

Notary's office, Real Estate Bank, Little Rock. This day personally appeared before the undersigned, Notary Public of the principal Bank of the Real Estate Bank of Arkansas, at Little Rock, the within named Frederic Notrebe and William Cummins, whose names are subscribed to the within deed of mortgage, and acknowledged that they had signed, sealed, executed the same for the use and purposes therein mentioned and contained. Given under my hand and seal this 17th day of May, A. D. 1839.

(Signed) THOS. W. NEWTON, [SEAL.]
Notary Public.

Exhibit B.

State of Arkansas, and County of Arkansas.

Know all men by these presents, that the undersigned hereby acknowledge themselves to owe and be indebted, for value received, to the Real Estate Bank of the State of Arkansas, in the just and full sum of thirty thousand dollars lawful money of the United States, for the payment whereof well and truly to be made to said Bank or order, on or before the 26th day of October, in the year of Christ eighteen hundred and sixty-one, with interest on said sum at the rate of five per cent. per annum, payable half yearly, they bind themselves, their heirs, and legal representatives, firmly by these presents. In testimony whereof they have hereto set their hands and seals, at Arkansas, this twenty-second day of July, in the year of Christ 1837.

(Signed) FREDERIC NOTREBE. [SEAL.]
WM. CUMMINS. [SEAL.]

Witnesses present:
B. L. HALLER.
H. J. McKENZIE.

Exhibit C.

This deed of mortgage, executed and delivered this *thirty* 20 second day of April, in the year of Christ eighteen hundred and forty, by and between Frederic Notrebe, of the County of Arkansas, and William Cummins, of the County of Pulaski, and State of Arkansas, of the first part, and the Real Estate Bank of the State of Arkansas, of the second part, witnesseth: that the said parties of the first part, for and in consideration of the stock taken and allowed to the said parties of the first part, in the Bank aforesaid, and the benefit hereinafter stated, have this day granted, bargained, and sold, and by these presents doth grant, bargain, sell, alien, transfer, and convey,

to the said Real Estate Bank of the State of Arkansas, the party of the second part, the following described tract or parcel of land, lying and situate in the County of Chicot, and State of Arkansas, and known and designated on the plats of the survey of the Public Lands as the northeast fractional quarter of fractional section twenty-seven, containing thirty-eight $\frac{84}{100}$ acres, the southwest quarter of fractional section twenty-two, the southeast quarter of section twenty-one, the west half of section twenty-one, the northwest quarter of section twenty-eight, the east half of section twenty-eight, and the southeast fractional quarter of fractional section twenty-three, containing fifty-three acres, all said tract being in Township nineteen (19) south, of Range one west, of the fifth principal meridian, containing in the whole, according to survey, twelve hundred and eleven $\frac{84}{100}$ acres of land, to have and to hold, *to have and to hold*, the said tract of land, with all and singular the rights, improvements, ways, hereditaments, and appurtenances, thereof or thereto in any wise belonging or attached, to the said Real Estate Bank of the State of Arkansas, or its assigns, forever. And the said parties of the first part, for themselves, their heirs, and legal representatives, do covenant, to and with the said party of the second part, and its assigns, that they have good and sufficient title to the above described land, with all and singular the appurtenances thereof, and they, their heirs or legal representatives, will warrant and defend the title, possession, and enjoyment of said tract of land, with appurtenances thereof aforesaid, to the party of the second part, or its assigns, against the claim or claims or lawful demands of any and all persons whomsoever, and against their heirs or assigns, forever.

The above deed is made, however, on the following express and well-understood conditions, that whereas the said parties of the first part have this day executed their bond, payable to the said Real Estate Bank of the State of Arkansas, for the sum of thirty thousand dollars lawful money of the United States, payable on the 26th day of October, 1861, and drawing interest on said sum at the rate five per cent. per annum, the said interest being payable half yearly until the principal falls due, the said bond having been executed for so much stock subscribed by the said parties of the first part, to and in the Real Estate Bank of the State of Arkansas.

Now, if the said parties of the first part, their heirs, assigns, or legal representatives, shall well and truly pay or cause to be paid, all moneys which said parties of the first part may receive from said Bank, on account of subscription for stock in said Bank, and the interest due on said moneys, according to the requisitions and regulations of said Bank, and if the parties of the first part, their heirs or assigns, shall well and truly pay or cause to be paid, to whom it may be due, so much or such sum of the bonds of the State of Arkansas, issued by the said State in favor of the Bank aforesaid, and the interest on said bonds of the State, or such part thereof as shall be

equal to the stock allowed and granted to them, the said parties of the first part, or to their heirs, or assigns, and shall well and truly pay or cause to be paid, the said bond to the said Bank above recited and described, executed by the parties of the first part, for stock in said Bank, and the interest accruing thereon, according to the tenor and effect, true intent and meaning of said bond, then the above deed to be void and of no effect, otherwise to remain in full force and virtue. It is distinctly agreed and understood between the parties of this mortgage, that the said lands, tenements, and hereditaments, with all and singular their appurtenances aforesaid, are to be enjoyed by, and remain in the possession and occupancy of the parties of the first part, until the same shall be legally sold to discharge and satisfy the above recited obligation and liabilities.

In testimony whereof the said parties of the first part have hereunto set their hands and seals, on the day and year first above mentioned.

(Signed) WM. CUMMINS. [SEAL.]

Executed in presence of
C. A. HARRIS, } Witnesses as to Wm. Cummins.
J. GOULD. }

State of Arkansas and County of Pulaski.

Personally appeared this day before the undersigned, and acting Justice of the Peace in and for the said county aforesaid, William Cummins, to me well known, one of the parties of the within deed of mortgage to the Real Estate Bank of Arkansas, and acknowledged that he had signed, sealed, and executed the same, for the uses and purposes therein mentioned and contained, and desired the same to be certified accordingly.

Given under my hand and seal at the City of Little Rock, in the County of Pulaski, this 22d day of April, A. D. 1840.

(Signed) THOS. W. NEWTON, [SEAL.]
Justice of the Peace.

"Exhibit D."

State of Arkansas, County of Arkansas.

Know all men by these presents, that the undersigned acknowledge themselves to owe and be indebted, for value received, to the Real Estate Bank of the State of Arkansas, in the just and full sum of thirty thousand dollars, lawful money of the United States, for the payment thereof, well and truly to be made, to said Bank, or order, on or before the 26th day of October, in the year of Christ eighteen hundred and sixty-one, with interest on said sum at the rate of five per cent. per annum, payable half yearly, they bind themselves, their heirs and legal representatives, firmly by these pre-

sents. In testimony whereof, they have hereunto set their hands and seals, this 22d day of April, in the year of Christ 1840.

(Signed) WM. CUMMINS. [SEAL.]

"Exhibit E." $7500 Dollars.

Real Estate Bank of the State of Arkansas, March 19th, 1840. Whereas, Frederic Notrebe and Wm. Cummins, as the owners of three hundred shares of the capital stock of the Real Estate Bank of the State of Arkansas, are entitled to a credit of fifteen thousand dollars, of which they have this day drawn, by said Cummins, seven thousand five hundred dollars, they hereby bind themselves, their heirs, administrators, or assigns, to pay the said Real Estate Bank, the said sum of seven thousand five hundred dollars, at the banking-house of said Bank, in Little Rock, in and by equal annual instalments, so that the whole sum shall be paid on or before twenty-fifth day of October, one thousand eight hundred and fifty-six, and also to pay annually in advance eight per cent. interest per annum, on the part of said sum remaining unpaid, at the end of each year.

(Signed) WM. CUMMINS. [SEAL.]
FREDERIC NOTREBE. [SEAL.]

"Exhibit F." $7500 Dollars.

Real Estate Bank of the State of Arkansas, March thirtieth (30), 1840. Whereas, Frederick Notrebe and Wm. Cummins, as owners of three hundred shares of capital of the Real Estate Bank of the State of Arkansas, are entitled to a credit of fifteen thousand dollars, of which the have this day drawn, by F. Notrebe, seven thousand five hundred dollars, they hereby bind themselves, their heirs, administrators, or assigns, to pay the said Real Estate Bank, the said sum of seven thousand five hundred dollars, at the banking house of said Bank, in Little Rock, in and equal annual instalments, so that the whole sum shall be paid on or before twenty-fifth day of October, one thousand eight hundred and fifty-six; and also, to pay annually, in advance, eight per cent. interest per annum, on the part of said sum remaining unpaid, at the end each year.

(Signed) FREDERIC NOTREBE. [SEAL.]
WM. CUMMINS. [SEAL.]

"Exhibit H."

Know all men by these presents, that the undersigned, William Cummins, of the Territory of Arkansas, and County of Pulaski, have located the donation claim of Joshua Buckur, which claim was sold to said Cummins by David H. Corder, in February, 1833, on the following described land, to wit: The southwest fractional qr. of section twenty-three; the southeast fractional qr. of same section;

the south half northeast fractional qr. of said section; the northwest fractional of the northwest fractional qr. of section twenty-four; the south half of the southwest fractional qr. of section thirteen, all in Township nineteen south, Range (1) one west, which tracts together contain, according to the surveys of the public lands, two hundred and ninety-one acres and 64-100; and whereas, Samuel E. Jones, of the County of Chicot, and Territory of Arkansas, had and owned certain improvements on said land, and before the entry of the said lands, by the said Cummins, it was agreed between him and the said Jones, that the said Cummins should locate the same for himself and the said Jones, as equal partners in the said land, each one paying one equal proportion of the costs of the improvement, and the price of the land; and whereas, the said Jones has this day fully paid to the said Cummins the one half of the value of said donation claim of Joshua Buckur, and the said Cummins has paid to the said Jones his part, and the proportion for the improvements on said land. Now the said Cummins hereby admits and acknowledges the said Samuel E. Jones to be the equal owner with himself in said above described tracts of land, and it is agreed between the said parties that, when a division is made, the said Cummins is to have his part of the land, laid off, out of, *out of* the lands lying lowest down on the river, and the said Jones is to have his part out of the lying above on the river, and the land is to be divided according to its value. It is further agreed by the said Cummins, and he hereby binds himself quitclaim, and, so soon as he shall have it in his power, to convey to said Jones all his right, title, claim, and interest, in and to such lot as said Jones may select, to be twenty-five rods front, and twenty rods deep, fronting on the river, in the *town* fraction of said land, provided said lot is selected about the *town* fraction, of said town fraction, for the purpose of a residence; and the said Cummins hereby binds himself, his heirs, and legal representatives, such part of said land, as shall be agreed upon between the parties, to be equal in value to his half interest in said land, or if they cannot agree, such part of said land as shall be divided, by three disinterested persons, to equal in value to his half interest in said land. In testimony whereof, the said Cummins has hereunto set his hand and seal, this 22d October, 1834.

(Signed) WM. CUMMINS. [SEAL.]

W. B. QUILLING.

I, James Blain, Clerk of the Circuit and County Courts, and ex-officio Recorder, in and for the County of Chicot, Arkansas Territory, do hereby certify, that the foregoing instrument of writing is a true copy from the original filed in my office for record, and recorded on the 20th day of March, A. D. 1835.

(Signed) JAMES BLAIN,

Clerk and ex-officio Recorder.

County of Chicot, *sct.*

I, Johnson Chapman, Clerk of the Circuit Court and ex-officio Recorder for the County of Chicot aforesaid, do hereby certify, that the foregoing deed and the certificates thereunto written are truly copied from the record of deed in my office book B, pages 36 and 37.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of my office, at office in Columbia, this 25th day of April, A. D. 1843.

(Signed) JOHNSON CHAPMAN, Clerk.

The following is a copy of the answer of George C. Breneman to the foregoing bill of complaint, which are in the following words and figures, to wit:

[Answer.]

In Chancery.

The separate answer of George C. Brenerman, one of the defendants to the bill of complaint of Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, Jr., Anthony H. Davies, Sanford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, Lorenso N. Clarke, John Drennen, and Robert L. Gibson, who sues, as trustees of the Real Estate Bank of the State of Arkansas, and as successors and survivors in said trusteeship of Cary A. Harris, deceased, and of James S. Conway and Daniel T. Wetter, removed, exhibited and filed against said defendants, and Ebenezer Cummins, as administrators of all and singular the goods and chattels, rights, and credits, which were of William Cummins, late of the County of Pulaski, deceased, who died intestate, Mary Cummins, infant daughter and sole heir of said William Cummins, Frederick Notrebe, and Samuel E. Jones, in the Chicot Circuit Court, in Chancery.

This defendant, now and at all times saving and reserving to himself all benefit of advantage of exception to the many errors and insufficiencies in said bill of complaint contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised is material or necessary for him to make answer unto, answering, this defendant saith, that he is a resident of the State of Pennsylvania, and has not been in the State of Arkansas since the exhibiting of said bill, nor since the time when said bill alleges that said deed of assignment was made to said complainants of the assets, &c., of said Bank, and that he had no knowledge or information in relation to the rights of said complainants, to the character of trustees or survivors; that in fact he knows nothing about the same, and has had no means of informing himself, neither does he know anything about the administration on said estate of said Cummins, but believes that said Ebenezer is the administrator, and that said Mary is the sole heir.

This defendant, to the best of his knowledge, information, and belief, doth deny that said Cummins and Notrebe ever executed the mortgage, as set forth and described in said bill of complaint, and referred to therein as Exhibit (A); but this defendant is informed and believes, that said Cummins and Notrebe did execute a deed of mortgage, corresponding with said deed of mortgage described in said bill, and above referred to, except that the deed of mortgage admitted to have been executed did not set forth or describe in what Township or Range the sections and quarter sections of land therein mentioned were situate, but on the contrary, did wholly fail to set forth any Township or Range in which said lands were situate; all which will more fully appear by a copy of the same herewith filed, and marked as Exhibit (No. 1); and this defendant doth deny that any such deed of mortgage, as said bill alleges, and set forth and above referred to, was ever duly recorded in the said County of Chicot, in which said lands as described in said bill are situated, but this defendant doth admit and state, that a deed of mortgage was recorded in said County, of which said Exhibit (No. 1), herewith filed, is a true copy.

This defendant does not know whether said Cummins and Notrebe ever subscribed for any stock in said Bank or not, nor has he any means of knowing the same, nor does this defendant know anything about said bond referred to in said bill *a* Exhibit (B), nor has he any means of knowing anything about the same.

This defendant knows nothing about said other deed of mortgage, mentioned and set forth in said bill as having been executed by said Cummins alone, nor of the bond therein referred to, mentioned in said bill as Exhibit (C & D), nor has he any means of knowing anything about the same, but states that no such deed of mortgage was ever recorded in said County of Chicot.

This defendant says that he knows nothing about the character of said Bank, nor does he know anything about the privileges to which stockholders in said Bank are entitled, nor of any action of the managers, directors, or stockholders, and that he knows nothing about said Cummins, or said Notrebe, borrowing any sum of money whatever from said Bank, nor whether they executed any note or bond for the same. Nor does he know anything about the bonds referred to in said bill as Exhibits E and F; nor has he any means of information in relation to said borrowing, or to the execution of the notes or bonds above last mentioned.

This defendant states that he knows nothing about the said deed of assignment in said will referred to; that he is not a citizen of Arkansas, and that he has not been in the said State of Arkansas since the execution of the same (if the same was ever executed). Nor has he any knowledge whether the same was ever recorded, executed, or acknowledged. Nor does he know anything of its contents whatever; nor does he know anything about the death of said Harris,

the removal of said Conway and Witter, nor the filling their places, as said bill alleges, neither has he any information or belief on the subject.

This defendant does not know, but supposes it to be true, that said Cummins died, and that the administration was granted on his estate, as said bill alleges.

This defendant knows nothing about said agreement between said William Cummins and said defendant Jones, and has no information or belief about it.

This defendant admits that he recovered judgment against William Cummins in his lifetime, as said bill alleges, and at the time and for the amount as said bill alleges, and that a part of the damages was remitted, as said bill alleges, and that the whole thereof remains wholly and entirely unpaid.

This defendant knows nothing about any payments made to said Bank by said Cummins and Notrebe, nor either of them, as mentioned in said bill, nor has he any information or belief about the same.

This defendant states that he is informed and believes that there is no other deed of mortgage recorded in said County of Chicot, executed by said Cummins and Notrebe, to said Bank, except the deed of mortgage of which Exhibit (No. 1), herewith filed, is a true copy.

This defendant states, that he has no personal knowledge in relation to the matters in said bill, and has had to depend on such information as he could obtain. This defendant states further, that he is informed and believes that a writ of execution of fieri facias was issued on said judgment, so obtained by your orator, against said William Cummins as aforesaid, out of said Circuit Court of the United States, and placed in the hands of the marshal of the said District of Arkansas, and by him levied on the said lands described and set forth in said bill, as the said lands so pretended to have been mortgaged by said Notrebe and said William Cummins to said Real Estate Bank, some time in the month of February, A. D. 1843, and before the death of said William Cummins, and that the said lands were not sold by said marshal, because the same had not been advertised according to law; and that the said writ of execution was returned by said marshal to said Court unexecuted and unsatisfied, for the reasons above stated; and this deponent states, that he is informed and believes that after the said marshal had so returned said writ of execution as aforesaid, and after the adjournment of the Court to which said writ was returned, a certain other writ of the United States, of venditioni exponas, was issued out of said Court on said judgment, and directed to said marshal, commanding him to expose the said lands to public vendue, to the highest bidder, according to law, and that the same was received by said marshal, and that said marshal did proceed, in accordance with the commands of said last-named writ, to sell, and did expose to public vendue, and did sell according to the command of said writ, and of law, the said lands, so

first mentioned in said bill, and that the said lands were bought by the attorney of this defendant, and for the benefit of this defendant; and that this defendant is informed and believes that said marshal will make, execute, acknowledge, and deliver the proper deed for said lands to this defendant, at the March Term, A. D. 1843, of the said Circuit Court of the United States; and as soon after the same shall have been executed, as this defendant can procure a copy of such deed, he will file with this answer a true copy of the said deed, and make the same as Exhibit No. 2; and this defendant states, that he has paid to said marshal the full price for which said lands were sold. This defendant states, that said first writ was levied on said lands by said marshal long before the commencement of this suit, and that the execution of said judgment was duly hastened by this defendant, but that the lands were not sold until after the filing of the said bill, to wit, on the 20th day of November, 1843.

Wherefore, this defendant states, that he is the bona fide purchaser of said lands, under and by virtue of said writs, and by which his lien, obtained by his said judgment, was duly and properly enforced and executed; and that by means of the premises, this defendant is advised that he is the legal owner of the interest of said William Cummins in said lands, freed of the supposed incumbrances created by any deed or deeds of mortgage from said William Cummins to said Bank whatever.

This defendant states, that at the time of the rendition of said judgment in his favor against said Cummins, he knew nothing about any such deed of mortgage as the one described and set forth in said bill as Exhibit (A), nor did he know anything about the same at the time when said lands were so levied on by said marshal as aforesaid; nor does he know anything about such deed of mortgage, except from information; but states that, from the best of his information and belief, no such deed of mortgage was ever executed, acknowledged, or recorded, as said bill alleges.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by said bill charged, without this, that there is any matter or thing in the said complainant's bill charged or contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, and maintain, and prove, as this honorable Court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges, in this behalf most wrongfully sustained.

(Signed) GEO. C. BRENEMAN,
Defendant.

BARNETT,
Solicitor and Counsellor.

State of Pennsylvania, Lancaster County, *ss.*

I, George C. Breneman, being duly sworn, do state that the matters and things stated and set forth in the foregoing answer, so far as stated on my own knowledge, are true, and so far as stated on the information of others, I believe them to be true, so help me God.

(Signed) GEO. C. BRENEMAN.

Sworn and subscribed the 2d day of March, A. D. 1844, before
E. SCHAEFFER.

State of Pennsylvania, Lancaster County, *ss.*

I, Emanuel Schaeffer, one of the Judges of the Court of Common Pleas, a Court of Record in and for the said County of Lancaster, do certify, that the above and foregoing answer of George C. Breneman was duly sworn to and subscribed before me, on the 2d day of March, Anno Domini one thousand eight hundred and forty-four.

In testimony whereof, I have hereunto subscribed my name, the 2d day of March, A. D. 1844.

(Signed) E. SCHAEFFER.

George C. Breneman, impleaded with Ebenezer Cummins, as administrator of William Cummins and Mary Cummins, Frederic Notrebe and Samuel E. Jones.

Bill in Chancery, in Chicot Circuit Court. In Chancery.

Samuel C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, Wm. F. Moore, John Preston, Jr., Anthony H. Davies, Sanford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, Lorenzo W. Clark, John Drennen, and Robert S. Gibson, who sue as Trustees of the Real Estate Bank of the State of Arkansas, and as successors and survivors in said Trusteeship of Cary A. Harris, deceased, and of James S. Conway and Daniel F. Witter, removed.

George C. Breneman, the defendant in the above stated suit, assigns the following reasons for not filing his answer in the above stated case, viz.:

That on the 11th day of November, 1840, while in Vicksburg, in the State of Mississippi, he received a fall that produced a compound fracture of the hip, which confined him to his room until the fifth day of March, 1841, when he left Vicksburg, and came to Lancaster, Pennsylvania, with very great difficulty; that after arriving in this (the last-mentioned) place, he was confined to his room for a period of eighteen months, and after recovering sufficiently to leave his room was obliged to use crutches for eighteen months longer; that he has continued to be a cripple from the time he received the fall, on the

11th of November, 1840, up to the present time, and is entirely unable to travel; that he did not know of the pendency of the said suit; that he neither took nor did he receive any papers from Arkansas, nor did his correspondent inform him thereof.

(Signed) GEO. C. BRENEMAN.

State of Pennsylvania, Lancaster County, ss.

I, George C. Breneman, being duly sworn, do state that the foregoing reasons, stated upon my own knowledge, are true, so help me God.

(Signed) GEO. C. BRENEMAN.

Sworn and subscribed the 2d day of March, A. D. 1844, before E. SCHAEFFER.

State of Pennsylvania, Lancaster County, ss.

I, Emanuel Schaeffer, one of the Judges of the Court of Common Pleas, a Court of Record in and for said County, do certify that the above and foregoing reasons of George C. Breneman was duly sworn to and subscribed before me, on the second day of March, Anno Domini one thousand eight hundred and forty-four.

In testimony whereof, I have hereunto subscribed my name, the 2d day of March, 1844.

(Signed) E. SCHAEFFER.

The following is a copy of the amendment to the bill of complaint, to wit:

"The amendment of Sam. C. Roane, Lambert Reardon, Ebenezer Walters, Henry L. Biscoe, William F. Moore, John Preston, Jr., Anthony H. Davis, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, John Drennen, Lorenzo N. Clarke, and Robert S. Gibson, trustees of the Real Estate Bank of the State of Arkansas, to the bill of complaint by them heretofore, in the Chicot Circuit Court, in Chancery, against Ebenezer Cummins, as the administrator of the estate of William Cummins, Frederic Notrebe, George C. Breneman, and others, exhibited.

The complainants, by way of amendment to said original bill, further represent, that in the record of said deed of mortgage in said bill mentioned, as executed by said Notrebe and Cummins, the words, "all said tracts being in Township nineteenth south, of Range one west, of the fifth principal meridian," in the description of the land therein mentioned, are admitted; and your orators aver that they were omitted by the recorder of said county by mistake or inadvertence, in copying said deed upon his record. But they further state that, as to this matter, they are no further informed than as they learn from the fact of said mortgage itself; and the certificate

of *of* the clerk, thereto annexed; but they do further aver, that if said words were not included in said mortgage when it was recorded; that then they were omitted by the parties by mistake and inadvertence, and afterwards inserted by said Cummins in his own handwriting.

Your orators further represent, that said Cummins and Notrebe, never have at any time owned any lands whatever, in said County of Chicot, answering to the description by sections and parts of sections of them in said bill mentioned, except this in the Township and Range aforesaid; and they further represent, that the purchase of said lands made by said George C. Breneman, as in his said answer set forth, was made not by himself, but by his agent and attorney, Isaac N. Barnett, Esquire, an attorney of this Court, said Breneman not being in this State at the time, and that when and long before said purchase was made, said Barnett perfectly well knew that said mortgage was duly recorded, except that the record contained no description of said lands by Township and Range; and he also perfectly well knew that said description, if omitted in said deed, was omitted by mistake; that said Cummins and Notrebe had no other land in said county, answering to said description, and that the lands in said bill described were the lands by said deed intended to be mortgaged to said Bank; that said Barnett had examined said record before, and was well aware that said lands were intended to be mortgaged; and that he bought said lands for said Breneman, under the levy, that he would be enabled to hold said lands by means of the omission aforesaid; and they aver that said *said* Isaac N. Barnett had, when said sale was made, seen the record in the answer of said Breneman mentioned; had heard it often said that said Cummins and Notrebe had mortgaged said lands to said Bank; and if he did not know that fact, had good reason to believe the same, and to be put upon inquiry regarding the same.

Your orators further represent, that they knew nothing as to these facts, when said bill was filed; but supposed said mortgage to have been originally executed, acknowledged, and recorded, as it appears to have been on its face, and are informed to the contrary only by said answer of said Breneman.

Wherefore your orators pray that said Breneman may make full, particular, and special answer to each and every of the allegations herein contained, as specially as the same were here again repeated, and he thereunto particularly interrogated, and that said other defendants may do the like, and that they may have such relief as by this said bill they have already prayed.

(Signed), PIKE & BALDWIN.

The following, is a copy of the deed, from the United States marshal for the District of Arkansas, to George C. Breneman, which are in the following words and figures, to wit:—

"This deed of conveyance, made and executed this seventeenth day of April, in the year of our Lord, one thousand eight hundred and forty-four, by and from Henry M. Rector, as Marshal of the United States, in and for the District of Arkansas, party of the first part, hereto, unto and with George C. Breneman, party of the second part hereto:—Witnesseth, that George C. Breneman, as assignee of George Brungard, heretofore, to wit, on the nineteenth day of April, A. D. 1842, by the consideration of the Circuit Court of the United States, in and for the District of Arkansas, recovered against William K. Inglish and Thomas H. Johnson, late partners in trade, under the name and style and firm of Inglish and Johnson, and Lorenzo Gibson and William Cummins, the sum of seven thousand six hundred dollars and twenty-four cents, damages, say ($7600 24) which were adjudged to him for his damages, together with all his costs in that suit expended, whereof the said Inglish, Johnson, Gibson, and Cummins, were convict, as by the record thereof remaining in said Court will more fully appear, to which reference is hereunto made for greater certainty of description of said judgment; and whereas said George C. Breneman, as assignee of George Brungard, for having execution of said judgment afterwards, to wit, on the 7th day February, A. D. 1843, sued out of the office of the Clerk of said Circuit Court, a certain writ of execution, commonly called a fire facias, in the name of the President of the United States, to the Marshal of the District of Arkansas directed, which said writ, after reciting the recovery aforesaid, command said Marshal that of the goods and chattels, lands and tenements of the said William K. Inglish, Thomas H. Johnson, Lorenzo Gibson, and William Cummins, he should cause to be made the damages aforesaid, together with the costs aforesaid (which costs were therein taxed to the sum of eighty-seven dollars and three cents), so that he should have the same before the Clerk of said Court, at his office in the City of Little Rock, on the second day of the March Term next after the date thereof, to be paid to the said plaintiffs, and that said Marshal should then and there certify how he had executed that writ, which writ was duly attested, and under the seal of said Court, and the same afterwards, to wit, on the 13th day of February, A. D. 1843, was delivered and come to the hands of Thomas W. Newton, who then and from thence, until at and after the return day of said writ, was Marshal of the United States in and for said District, in due form of law to be executed; and the said Thomas W. Newton, so being Marshal as aforesaid, returned said writ, according to law, and the command thereof, and among other things indorsed and certified thereon, that he had by virtue thereof levied upon and seized the following described tracts of land to wit:—The south fractional half of the northwest fractional quarter of fractional section ten (10), the northwest fractional quarter of the northwest fractional quarter of fractional section ten (10), the northeast fractional part (east of Grand Lake),

of the northeast fractional quarter of section nine (9), the southeast fractional quarter (east of Grand Lake) of fractional section (4), and the southwest quarter of fractional section three (3), all in Township nineteen (19) south, of Range one (1) west, of the 5th principal meridian; also the undivided half or moiety of the following lands, to wit: the southwest quarter of fractional section twenty-two (22), the northeast fractional quarter of fractional section twenty-seven (27), the west half and the southeast quarter of section twenty-one (21), the east half and the northwest quarter of section twenty-eight (28), the southwest fractional quarter of fractional section twenty-three (23), the north half of section thirty (30), the east half and the southwest quarter of section nineteen (19), the east half of the northwest quarter of section nineteen (19), the east half of section eighteen (18), the east half of the southwest quarter of section eighteen (18), the east half of section seven (7), the southeast and west half of the northeast quarter of section six (6), and the east half of the northwest quarter of section six (6). All of the last-mentioned tracts lying and being in Township nineteen (19) south of the base line, and range one (1) west, of the 5th principal meridian;—also all of the following described tracts of land, to wit: the west half of the southeast quarter of fractional section thirty-four (34), the southeast quarter of the northeast quarter of fractional section thirty-four (34), the north fractional half of the northeast fractional quarter of section thirty-four (34), the southwest quarter of the northwest quarter of fractional section thirty-five (35); all of the last-mentioned tracts being in township eighteen, south of the base line, and range one (1) west, of the 5th principal meridian, as the property of said William Cummins, and also certified and indorsed on said writ, that the lands above described so levied on by virtue thereof remained in his hands unsold, for want of time to advertise and sell the same according to law, and that said damages and costs were wholly unsatisfied; and whereas the said George C. Breneman, as such assignee, afterwards, to wit, on the 21st day of August, A. D. 1843, sued and prosecuted out of the office of the Clerk of said Circuit Court, for the recovery of the damages and costs aforesaid, a certain writ of execution called a *venditioni exponas*, in the name of the President of the United States, to the Marshal of the District of Arkansas directed, which writ, after reciting the said recovery, and the issuance of the aforesaid writ of fieri facias, together with the said proceedings had under and by virtue thereof, commanded said Marshal, that he should expose for sale and sell the property above specified and levied upon, as aforesaid, and that he should cause to be made the damages and costs aforesaid (which costs were taxed in said writ of *venditioni exponas* at the sum of one hundred and nine dollars and fifty-three cents), so that he should have before the Clerk of said Court, at his office in the City of Little Rock, on the first Monday of January next, after the date thereof, to be paid over

to said plaintiff, and that he should then and there certify how he had executed that writ, which said writ of *venditioni exponas* was duly attested, and under the seal of said Court, and the same afterward, to wit, on the 21st day of August, A. D. 1843, was delivered to and came to the hands of Henry M. Rector, who then and from thence until at and after the return day thereof, was from thence continued to be, and now is, Marshal of the United States in and for said district, in due form of law to be executed, by virtue of which said writ of *venditioni exponas*, he, the said Henry M. Rector, as Marshal as aforesaid, after having advertised said lands for sale at public auction, according to law, and the rules prescribed by said Circuit Court, did proceed, on Monday, the twentieth day of November, A. D. 1843, at the court-house door in the town of Columbia, Chicot County (being the county in which said lands are situated), in said District (being the time and place appointed, and in the notice of sales specified), to expose the above described lands, so levied upon and commanded to be sold as aforesaid, for sale to the highest bidder, at public auction. Whereupon George C. Breneman, then and there at said sale bid and offered to give for the following described tracts of land to wit: The south fractional half of the northwest fractional quarter of fractional section ten (10); the northwest fractional quarter of the northwest fractional quarter of fractional section (10); the northeast fractional part (east of Grand Lake), of the northeast fractional quarter of section nine (9); the southeast fractional quarter (east of Grand Lake) of fractional section four (4); and the southwest quarter of fractional section three (3); all in township nineteen, south of the base line, and range one (1) west, of the 5th principal meridian, the sum of twenty dollars, and he being the last and highest bidder therefor, said last-mentioned tracts of land were then and there publicly struck off and sold, by said Marshal, to said George C. Breneman, at that price, and said George C. Breneman also there and then at said sale bid and offered to give for the undivided half or moiety of the following described tracts of land, to wit: The southwest quarter of fractional section twenty-two (22); the northeast fractional quarter of fractional section twenty-seven (27); the west half and southeast quarter of section twenty-one (21); the east half and northwest quarter of section *of section* twenty-eight (28); the southwest fractional quarter of fractional section twenty-three (23); the north half of section thirty (30); the east half and southwest quarter of section nineteen (19); the east half of the northwest quarter of section nineteen (19); the east half of section eighteen (18); the east half of the southwest quarter of section eighteen (18); the east half of section seven (7); the southeast quarter and the west half of the northeast quarter of section six (6), and the east half of the northwest quarter of section six (6), all of the last-mentioned tracts being in township nineteen (19), south of the base line, and range one (1) west, of the fifth principal meridian, the sum of one hundred dollars, and he being the last and highest bidder therefor, said last-mentioned tracts of land were then and

there publicly struck off and sold by said Marshal to said George C. Breneman at that price; and the said George C. Breneman also then and there bid and offered to give the following described tracts of land, to wit: The west half of the southeast quarter of fractional section thirty-four (34), the southeast quarter of the northeast quarter of fractional section thirty-four (34), the north fractional half of the northeast fractional quarter of fractional section thirty-four (34), and the southwest quarter of the northwest quarter of fractional section thirty-five (35); all of the last-mentioned tracts of land being in township eighteen (18), south of the base line, and range one (1) west, of the fifth principal meridian, the sum of thirty dollars; and he being the last and highest bidder therefor, said last-mentioned tracts of land were also then and there publicly struck off and sold by said Marshal to said George C. Breneman at that price, which said several sums, so bid by said Breneman, amounting in the aggregate to the sum of one hundred and fifty dollars, was then and there paid by said Breneman to said Marshal, a memorandum whereof, and after the sale aforesaid, was made by said Marshal at the time, and indorsed upon said writ of venditioni exponas; all of which proceedings will more fully appear by reference to said original writs of execution, returned to and now on file in the office of the Clerk of said Circuit Court, which reference is here made, for greater of description therefor, to confirm the sale aforesaid to said George C. Breneman. This indenture witnesseth: That the said Henry M. Rector, Marshal of the United States in and for the District of Arkansas, for and in consideration of the premises aforesaid, and of the said sum of one hundred and fifty dollars to him in hand paid by the said George C. Breneman, the receipt whereof is hereby acknowledged, and by virtue of the authority in him vested by law, in his capacity of Marshal as aforesaid, hath given, granted, sold, and conveyed, and by these presents doth give, grant, bargain, sell, convey, and confirm, unto the said George C. Breneman and his heirs and assigns forever, all and singular the before-mentioned and described tracts of land, situated, bounded, and described as aforesaid, with the appurtenances thereunto belonging, with all the right, title, and interest of the said William Cummins in, to, or over the same, at the time of the rendition of said judgment, or at any time since, to have and to hold the above-described and sole tracts of land, and every part and parcel thereof, unto the said George C. Breneman, his heirs and assigns forever, in as full and ample a manner as he the said Henry M. Rector, as Marshal as aforesaid, by virtue of the writ aforesaid, might, could, or ought to sell and convey the same.

In testimony whereof the said Henry M. Rector, as aforesaid, has hereunto set his hand and affixed his seal, at the City of Little Rock, in the District aforesaid, the day and year first above written.

(Signed) HENRY M. RECTOR, [SEAL.]
Marshal of the U. S. for the District of Arkansas.

Signed, sealed, and delivered in the presence of two subscribing witnesses, to wit:

N. T. GAINES,
GEO. C. WATKINS.

United States of America, District of Arkansas.

In the Circuit Court, April Term, A.D. 1844, April 23d, 1844.

The following entry was had, to wit: And now, on this day, comes into Court—*And now, on this day, comes into Court*, here in his proper person, Henry M. Rector, Marshal of the United States for this District, and acknowledged to have executed a deed of conveyance on the nineteenth day of April, A. D. 1844, to George C. Breneman, for the following described lands, to wit: the south fractional half of the northwest fractional quarter of fractional section ten (10); the northwest fractional quarter of the northwest fractional quarter of fractional section ten (10); the northeast fractional part (east of Grand Lake) of the northeast fractional quarter of section nine (9); the southeast fractional quarter (east of Grand Lake) of fractional section four (4); and the southwest quarter of fractional section three (3); all in township (19) south, of range one (1) west, of the fifth principal meridian; also, the undivided half or moiety of the following lands, to wit: the southwest quarter of fractional section twenty-two (22); the northeast fractional quarter of fractional section twenty-seven (27); the west half and the southeast quarter of section twenty-one (21); the east half and the northwest quarter of section twenty-eight; the southwest fractional quarter of fractional section twenty-three (23); the north half of section thirty (30); the east half and southwest quarter of section nineteen (19); the east half of the northwest quarter of section nineteen (19); the east half of section eighteen (18); the east half of the southwest quarter of section eighteen (18); the east half of section seven (7); the southeast and west half of the northeast quarter of section six (6); and the east half of the northwest quarter of section six (6); all of the last-mentioned tracts of land lying and being in township nineteen (19) south of the base line, and range (1) west, of the fifth principal meridian; also all of the following-described tracts of land, to wit, the west half of the southeast quarter of fractional section thirty-four (34); the southeast quarter of the northeast quarter of fractional section thirty-four (34); the north fractional half of the northeast fractional quarter of section thirty-four (34); the southwest quarter of northwest quarter of fractional section thirty-five (35); all of the last-mentioned tracts of land being in township eighteen (18) south, of the base line, and range (1) west, of the fifth principal meridian, as the property of said William Cummins, levied upon in execution, and sold on venditioni exponas, issued upon judgment heretofore rendered in this Court in favor of George C. Brene-

man, as assignee of George Brungard, plaintiff, versus William K. Inglish and Thomas H. Johnson, late partners in trade, under the name, style, and firm of Inglish & Johnson, and Lorenzo Gibson and William Cummins, defendants, in an action of assumpsit, and so forth, for the purposes and consideration in said deed mentioned and expressed; and it is ordered by the Court that this acknowledgment be certified upon said deed, under the seal of the said Circuit Court, by the Clerk thereof. A true copy, from the record.

Attest, WM. FIELD, Clerk.
By A. H. RUTHERFORD, Deputy Clerk.

District of Arkansas, *sct.*

I, William Field, Clerk of the Circuit Court of the United States, for the district aforesaid, do hereby certify that the above and foregoing acknowledgment is truly copied from the entry on common law record, Book B, page 185, &c., as appears from the record in my office. Witness my hand, and the seal of said Circuit Court, this 29th day of April, A. D. 1844.

(Signed) WM. FIELD, Clerk.
By A. H. RUTHERFORD, Deputy Clerk.

Deposited for record in my office, May 31st, 1844. Recorded, June 7th, of same year.

Attest, JOHNSON CHAPMAN, Clerk and ex-officio Recorder for Chicot County.

State of Arkansas; County of Chicot, *sct.*

I, William J. Neale, Clerk of the Circuit Court for said County of Chicot (and ex-officio Recorder for said county), do hereby certify that the foregoing deed and certificates are correctly copied from the records, as the same appear on Record Book E, pages 87, 88, 89, 90, 91, and 92, in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, this 14th day of November, A. D. 1845.

(Signed) W. J. NEALE, Clerk.

The following is a copy of the separate answer of George C. Breneman, who is impleaded with Ebenezer Cummins, admr. of William Cummins, deceased, which are in the words and figures to wit:

Separate Answer of G. C. Breneman.

The separate answer of George C. Breneman, who is impleaded with Ebenezer W. Cummins, administrator of William Cummins,

deceased, Frederic Notrebe, and others, to the amendment of Sam. C. Roane, Lambert Reardon, Ebenezer Walters, Henry L. Biscoe, William F. Moore, John Preston, Jr., Anthony H. Davis, Sanford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, John Drennen, Lorenzo N. Clarke, and Robert S. Gibson, trustees of the Real Estate Bank of the State of Arkansas, to their bill of complaint against said defendant, in the Chicot Circuit Court, in Chancery, theretofore exhibited.

This defendant, saving and reserving to himself all benefits of exception, &c., for answer to this amendment, says, that he is informed and believes that the said words of description of township and range, in said amendment mentioned, were not contained in said deed of mortgage when the same was received, and he supposes it to be true that the same was omitted by mistake in the execution of said deed; but he has no knowledge or information that said mistake was ever rectified at all, but he avers, that he is informed and believes, that if any such rectification has been made, it was done after the record of said deed, and that no record thereof was ever made; nor has he any information, or belief, or knowledge, whether or not said Cummins and Notrebe owned any other lands in said county of the same description of sections and parts of sections of those in said bill mentioned.

This defendant admits, that said purchase, mentioned in his answer to said original bill, was made for him by his agent and attorney, Isaac W. Barnett, and that he has no information in relation to the same, but said Barnett has since informed him, and he believes it to be true, that he, said Barnett, knew that a deed of mortgage was recorded, in said county, of which said copy, with the said answer of this defendant to said original bill filed, is a true copy; but said Barnett says, that he did not know the facts, but supposed it to be true, that said descriptions by township and range were left out by mistake, or by design, of said Cummins, but he did not know that said Cummins and Notrebe had no other lands in said county answering to said description; nor did he know that said land, in said bill mentioned, were intended to be mortgaged, nor did he in fact know anything about the mistake or intention, except by mere supposition; he says, he had learned that there was a mistake in said deed, and that the directory of said Bank had endeavored, after the recording thereof, to induce said Cummins to rectify the same, but he understood that it had not been done: he did examine the record, and found another mortgage from said Cummins and Notrebe to said Bank, except the one of which said copy is a true copy; he says, that he bought said lands for the defendant, under the belief that the defendant would hold the same, but by means of any mistake in said deed of mortgage; said Barnett says, he was informed that, after the record referred to in said answer of this defendant, the directory of said Bank discovered that there was a mistake in said deed, and en-

deavored to have the same rectified, but whether the complainants knew anything thereof, said Barnett, nor this defendant, had no knowledge, information, or belief, and, having answered fully, he prays to be hence dismissed, with his reasonable costs.

(Signed) GEORGE C. BRENEMAN.
BARNETT,
Solicitor.

State of Pennsylvania, County of Lancaster.

I, George C. Breneman, do solemnly swear, that the matters and things in the foregoing answer stated, so far as stated on my own knowledge, are true, and so far as stated on the information of others, I believe them to be true, so help me God.

(Signed) GEORGE C. BRENEMAN.

Sworn to and subscribed, this 26th day of July, A. D. 1844, me

E. SCHAEFFER,
One Associate Judges, Court Common Pleas, of Lancaster County, Pennsylvania.

State of Pennsylvania, Lancaster County, *ss.*

Be it known, that I, Rudolph F. Rauch, Esquire, Protons, they of the Court of Common Pleas, in the County and State aforesaid, do hereby certify, that the Honorable Emanuel Schaeffer is an Associate Judge of the said Court of Common Pleas; that he was duly commissioned by Governor of the Commonwealth of Pennsylvania, on the 14th day of January, in the year of our Lord one thousand eight hundred and forty-three, for the full period and term of five years from said date. And I do further certify, that his signature as above written is genuine, he, the said Emanuel Schaeffer, having full power to administer oaths, &c.

Given under my hand, and the seal of the said Court, this the 26th of July, in the year of our Lord one thousand eight hundred and forty-four.

RUD. F. RAUCH,
(Signed) Per Proth'y,
SAML. DORMORT.

The following is a copy of the answer of Isaac N. Barnett to the interrogations of Sam. C. Roane and others, Trustees R. E. Bank of Arkansas, &c. to wit:

Answer of Isaac N. Barnett to interrogations in the case of Sam. C. Roane and others, Trustees of the Real Estate Bank of Arkansas, v. The Administrator of William Cummins, deceased, Frederic Notrebe, George C. Breneman et al.

To 1st interrogatory. I did, as an attorney and agent of said Breneman *by* for him said lands, in said bill mentioned, at the sale under process from the Federal court therein mentioned.

To the 2d interrogatory. I did not know it to be a fact, when I purchased said lands as aforesaid, that they had been mortgaged to said Bank. I had seen the instrument of mortgage, a copy of which is filed with the anwer of said Breneman, to the said original bill, and marked as Exhibit No. 1, and from the correspondence of the description and numbers of the sections and parts of sections, I inferred that they were the same lands, but I did not know or have any information, according to the best of my recollection, whether said Cummins and Notrebe had mortgage or attempted to mortgage, any other lands in this State, to said Bank, for the purpose of procuring stock. I have heard that said Cummins and Notrebe were large landholders in this State.

To 3d interrogatory. I did not know whether the description of said lands by Township and Range had been omitted by mistake or design; I had no information that would enable me to decide which. I had known William Cummins personally, and by character, and that knowledge and information would rather induce me to believe the latter. I did not know, nor, according to my recollection, had I any information, whether or not said Bank looked upon and held said mortgage as a lien on said lands, until I read the said bill of complaint, because I did not know, nor do I remember, that I had any information, until said bill was read by me, that stock had been awarded by said Bank to said Cummins and Notrebe, on any mortgage, or supposed mortgage, of said lands; I inferred as I have before stated, from the correspondence in the numbers and parts of sections, that they were the same lands included in said instrument as recorded, except as to the description of Township and Range; I did not know whether or not said Cummins and Notrebe had any other lands in said county, corresponding in the numbers and parts of sections with said lands. I found no evidence of title to them, or any such in the records of said county, or elsewhere.

To interrogatory 4th and 5th. When I had the lands of Cummins levied on by the said *fi. fa.* on said judgment in said Circuit Court of the United States, and when I examined the record for that purpose, I discovered that said Cummins and Notrebe owned said lands, but before then I knew not that they owned such lands. I had heard that Cummins and Notrebe, and said Cummins, individually, and perhaps said Notrebe (for I have no distinct recollection about it), owned lands on Grand Lake, the number of acres and amount and description of which I did not know, according to the best of my recollection, until I so examined the records as aforesaid. I do not remember whether I had heard that said lands had been mortgage before I had examined the records as aforesaid, or just about that time. I had no interest in the matter, until I wanted to have the execution of said judgment on said lands.

6th. I do not remember whether I had read the bill in this case before the purchase by me, as aforesaid, or not. It is my impression that I had heard that a bill was filed, and I may have noticed the

fact, that said Breneman was made a party as well to the bill in this case as to a bill in another case of said Bank v. Cummins and others. But I do not remember anything about it distinctly, and did not then know that I should have anything to do with the matter, nor was I the agent or attorney of said Breneman, in either of those cases, until some time after I had so purchased said lands, and it is therefore my impression that I had not read the bill or paid any attention to it. I seldom, if ever, read any bill in Chancery, unless I am a counsel or a party in interested.

To 7th interrogatory. I had examined the records of said pretended mortgage or mortgages, when I had the levy made by said fi. fa. which was before the said purchase.

Said purchase was not made by me under hope that said Breneman would be enabled to hold said lands, by reason of the defect in the record of it, because I did not know whether said deed was defectively made, or defectively recorded, and to this day I do not know whether said deed was defective in execution or in recording, but I presumed when I purchased as aforesaid, and such is my present suspicion, that said deed was recorded as it was executed.

I further state that when I examined the records for the purpose of having a levy made on the same as aforesaid, my principal object was to find out all the lands owned by said Cummins, in this County, and to sell out his interest in the same, which I did, and I purchased at said sale, for said Breneman, all the lands of said Cummins which I could find, except such as had been sold before said levy was made. I had understood, before I examined the records as aforesaid, that said Cummins owned a great deal of land in this County and State, and I would further state I may have heard even before examining the records as aforesaid that said Cummins had mortgage lands on Grad Lake, to said Bank; that I have no recollection of it. I never expected to be examined in relation to this matter, until the last term of this Court, and until the present term, I had no expectation that any suspicions of mine would be required in this case, and therefore I cannot pretend to be accurate in the detailed and minute answers which I have been required to make in this case, nor is my memory at all satisfactory to myself; and further this deponent saith not.

(Signed,) ISAAC N. BARNETT.

I, Isaac N. Barnett, do solemnly swear that answers made to the foregoing interrogatories are true, to the best of my knowledge, information, belief, and recollection.

(Signed) I. N. BARNETT.

Subscribed and sworn to in open Court, this 14th day of November, A. D. 1845.

(Signed) W. J. NEALE,
Clerk.

The following is a copy of the replication of Sam. C. Roane and others to the answer of George C. Breneman, to the bill of complaint and amendments thereto, which are in the words and figures to wit:

In Chicot Circuit Court, at May Term, 1845. In Chancery.

The replication of Samuel C. Roane, Ebenezer Walter, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, Jr., Anthony H. Davies, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, and John Drennen, as survivors of Lorenzo N. Clarke and Robert S. Gibson, to the answer of George C. Breneman, to the bill of complaint and amendment thereto by them and said Clarke and Gibson against said Breneman and others, in the Chicot Circuit Court, in Chancery exhibited.

These repliants now, and at all times hereafter, saving and reserving unto themselves all and all manner of benefit and advantage of exception, to the manifold errors, uncertainties, and insufficiencies, in said answer contained, for replication thereunto to say, that they will aver, maintain, and prove their said bill and amendment to be true, certain, and sufficient in the law to be answered unto, and that said answers are evasive, untrue, and unsufficient, to be replied unto by these repliants. Without that *that* any other matter or thing in said answer contained, material and effectual in the law, to be replied unto, confessed and owned, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove, as this Honorable Court shall direct, and humbly pray, as in and by said bill and amendment they have already prayed.

(Signed) PIKE & BALDWIN.

The following is a copy of the answer of Mary Cummins, *an* infact, by Thomas N. Byers, her next friend, to the bill of complaint of Sam. C. Roane and others, which are in the words and figures to wit:

"The answer of Mary Cummins, an infact, by Thomas N. Byers, Esq., her next friend, to the bill of complaint of Sam. C. Roane and others, as trustees of the Real Estate Bank of the State of Arkansas, against her and Frederic Notrebe, and Ebenezer Cummins, as administrator of the estate of William Cummins, deceased, and others, defendants, in Chicot Circuit Court, in Chancery, exhibited.

This respondent, by her said guardian, now, and at all times hereafter, saving and reserving to herself all and all manner of advantage and benefit of exception to the manifold errors, uncertainties, and insufficiencies, in said bill contained, for answer thereunto saith, that she is the daughter and sole heir of said William Cummins, deceased, and under twenty-one years of age, and as to all the other matters alleged in said bill, she denies the same, and requires proof. Without that, that any other matter or thing in said bill contained,

material or necessary to be answered unto, confessed and avowed, traversed or denied, is true, and prays to be hence discharged with his costs.

(Signed) MARY CUMMINS,
By T. N. BYERS,
As Guardian ad litem.

The following is a copy of the replication of Sam. C. Roane and others, to the answer of Mary Cummins, to wit:

The replication of Sam. C. Roane and others, as trustees of the Real Estate Bank of the State of Arkansas, complainants, to the answer of Mary Cummins, defendant, by Thomas N. Byers, her guardian *ad litem*, to their bill of complaint against her and Frederic Notrebe and others, in the Chicot Circuit Court, in Chancery exhibited:

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by the repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avowed, traversed or denied, is true; all which matters and things, these repliants are and will be ready to aver and prove, as this honorable Court shall direct, and humbly pray, as in and by their said bill they have already prayed.

(Signed) PIKE & BALDWIN.

The following is a copy of the affidavit of Albert Pike, to wit:

I, Albert Pike, do state on oath, that I was the attorney of the Real Estate Bank, at Little Rock, in 1840; that it was then given to the Bank, by Judge Johnson, as his opinion, that a mortgage under the territorial law, not recorded within three months from its date, was had as to subsequent purchases, without notice, under which opinion the mortgage of William Cummins and Frederic Notrebe, among others, held defective; but I know of no other objection ever being made to it by the officers of the Bank; nor do I know of any difficulty between said Cummins and the officers of the Bank, in regard to the lands in that mortgage. There was a difficulty between them as to lands in Phillips County, mortgaged by him, to secure his individual stock.

(Signed) ALBERT PIKE.

Sworn to and subscribed before me, this 14th November, 1845.
W. J. NEALE,
Clerk.

The following is a copy of the Interrogatories to Isaac N. Barnett, Esq., to wit:

Interrogatories propounded to Isaac N. Barnett, Esqr., in the case of Samuel C. Roane and others, trustees of the Real Estate Bank v. The Administrator and Heirs of William Cummins, Frederic Notrebe, George C. Breneman et al.

1st. Did you, as attorney and agent for George C. Breneman, purchase for him and in his name the lands in the bill in this case mentioned, as in his answer is alleged, at the sale under process from the Federal Court therein mentioned?

2d. Did you not know or believe or suspect, or have reason to think and believe, when you so purchased said lands, that they were the identical lands mortgaged by said Notrebe and Cummins to said Bank?

3d. Did you know, or believe, or suspect, or have reason to think and suppose, whenever said purchase was made, and before now, long before, that the description of said lands by Township and Range was omitted by mistake; that said Cummins and Notrebe had no other lands in said County answering to the description in the mortgage as recorded, and that the identical lands mentioned in said bill were the lands mortgaged by them to said Bank?

4th. Had you not long known, heard, been informed, understood, or believed, that the lands described in said mortgage as described, were the Grand Lake lands of Cummins and Notrebe, and that their Grand Lake lands were mortgaged to said Bank?

5th. Did you or not know, believe, or understand, when you bought said lands, that they had been by said Cummins and Notrebe mortgaged to said Bank for stock? Had you not often heard that such was the case, and did you not have good reason to believe it?

6th. Had you not seen and read the bill in this case before you so made said purchase, or if not, did you not know, or had you not heard or been informed, that said bill was filed to foreclose a mortgage to said Bank in the identical lands afterwards bought by you?

7th. Had you not before making said purchase examined the record of said mortgage, and did you not buy said lands with the belief, or under the hopes, that in consequence of the defect in recording it said Breneman would be enabled to hold said lands, and in consequence of that defect alone.

(Signed) PIKE & BALDWIN.

In Chicot Circuit Court, at November Term, 1845. In Chancery.

SAMUEL C. ROANE and others, Trustees,
v.
CUMMINS' Administrator and Heir, FREDERIC NOTREBE, GEORGE C. BRENEMAN, et al.

Upon the hearing of this case the following facts are agreed to

and admitted by said complainants, and said George C. Breneman, to wit:

The original mortgage, now produced to the Court, here correspond in every respect with the copy thereof annexed to said bill, as Exhibit A, and has indorsed upon it proper certificates of acknowledgment and record, which are also truly copied in said exhibit. The signatures of William Cummins and Frederic Notrebe thereto are genuine, and are the written part of said mortgage, is in the handwriting of said William Cummins, as well the description of the lands by Township and Range, as the other parts of the description; and there is no erasure or interlineation, but the words "all said tracts being in Township nineteen (19) south, of Range one (1) west, of the fifth principal meridian," follow immediately after, and connected by, with the preceding part of the description, in the handwriting of said Cummins, and in a space left between the printed parts of the mortgage, for inserting the description of lands mortgaged. That in the copy of said deed upon the Record Book of deeds and mortgages of Chicot County, these lands, containing such description by Township and Range, are not found. That all the other exhibits annexed to said bill are truly exhibited, and the originals whereof they are copies were duly executed as in the bill is alleged.

That said Cummins and Notrebe became stockholders in the Real Estate Bank, as in the bill alleged. That said Bank, by deed executed April 2d, 1842, assigned all her assets, as in the bill is alleged; and the complainants, in the bill named, were trustees under said deed when the bill was filed. That said Breneman obtained judgment against said Cummins, in said U. S. Circuit Court, on the 18th day of April, A. D. 1842, as in the bill is alleged. That the statements of said answer, as to the issuance of execution thereon, and levy thereunder, upon the lands aforesaid, and return of execution without sale, and issuance of writ of vend. ex., are true and correct in all respects. That said lands were sold under said vend. ex., in the manner and at the time in the answer of said Breneman mentioned, and purchased by said Breneman, on the day alleged, to wit, November 20, 1843; and that, on the 17th of April, A. D. 1844, he obtained the deed of the Marshal of the Arkansas District, for said lands, which deed is by consent read in evidence, the original filed, and a copy certified by the Clerk of this Court shall be taken as part of this statement. That there is no record of said first mortgage, except that of which Exhibit one of the answer is a true copy. Wherefore, this statement of facts is now signed by counsel, to be read on the hearing of this cause.

(Signed) ALBERT PIKE,
Attorney for Complainants.
J. N. BARNETT,
Solicitor for Defendant.
GEORGE C. BRENEMAN.

State of Arkansas, County of Chicot.

In the Circuit Court, on the Chancery side thereof. November Term, A. D. 1845. November 14th, A. D. 1845.

SAM. C. ROANE, EBENEZER WALTERS, LAMBERT REARDON, HENRY L. BISCOE, WILLIAM F. MOORE, JOHN PRESTON, Jr., ANTHONY H. DAVIES, SANDFORD C. FAULKNER, SILAS CRAIG, GEORGE HILL, JAMES H. WALKER, ENOCH J. SMITH, and JOHN DRENNAN, surviving Trustees of the Real Estate Bank of the State of Arkansas, complainants.

v.

EBENEZER CUMMINS, as Administrator of all and singular the goods and chattels, rights and credits which were of WILLIAM CUMMINS, deceased, FREDERIC NOTREBE, MARY CUMMINS, GEORGE C. BRENEMAN, and SAMUEL E. JONES, defendant.

This day came the said complainants, by Pike, their Solicitor, the said George C. Breneman, by Barnett, his Solicitor, and the said Mary Cummins, by her said Guardian ad litem, and this cause now coming on for final hearing, as to said George C. Breneman and Mary Cummins, upon the bill in the case, and the exhibit thereto annexed; the amendment to said bill; the answers of said George C. Breneman, and replications thereto; the exhibits annexed to said answer of said Breneman, to the original bill; the answer of said Mary Cummins, and replications thereto; upon proof of the correctness of all said exhibits, which is now here made in note to the Court; upon the testimony of Isaac N. Barnett and Albert Pike, which is reduced to writing, and ordered to form part of the record in this case, and upon the statement of facts agreed upon by counsel, and filed in writing, and ordered to form part of the record in this case; and the said pleadings, papers, and evidence being heard and considered by the Court, and full argument of counsel being had therein, and the Court having now fully considered the same, and being fully advised what decree to render therein, the Court here is of opinion, doth so find, adjudge and determine, that on the twenty-second day of July, A. D. 1837, the said William Cummins and Frederic Notrebe, in order to secure three hundred shares of stock, theretofore subscribed for by and thereafter awarded to them jointly, and the repayment of the moneys to be by them borrowed upon the credit of their said stock, from said Bank, executed their mortgage, by which they conveyed to said Bank the following described lands lying and situate in said County of Chicot, to wit:

The northeast fractional quarter of frac. section twenty-seven, the southwest quarter of frac. section twenty-two, the southeast quarter of section twenty-one, the west half of section twenty-one, the north-

west quarter of section twenty-eight, the east half of section twenty-eight, and the southwest fractional quarter of frac. sec. twenty-three; which lands do in truth lie in township nineteen south, of range one west, and contain together twelve hundred and eleven acres $\frac{84}{100}$. That whether the latter part of the description of said lands, to wit, the township and range, was contained in said deed, when it was originally executed, and omitted by mistake of the Recorder in recording it, or whether it was originally omitted in the deed, and ordered by said Cummins, after the same was recorded, which the Court here doth not find it necessary to determine, it was in either case well recorded, so that the registry thereof was constructive notice to subsequent incumbrances. That on the nineteenth day of March, A. D. 1840, the said Cummins and Notrebe borrowed of said Bank, and on said mortgage, and on their stock credit, seven thousand five hundred dollars, and on the twentieth day of March, A. D. 1840, seven thousand five hundred dollars; for each which sum, on the day when they so borrowed it, they executed a joint bond, binding themselves to pay the same so then borrowed, in and by equal annual instalments, so that the same should be fully paid on or before the twenty-fifth day of October, A. D. 1856, and also to pay annually, in advance, interest at the rate of eight per cent. per annum, on the part of said sum remaining unpaid at the end of each year. That the plaintiffs are the equitable assignees of said lands and mortgages. That said second bond, being for the part of said money received by said Notrebe, has been fully paid, and that nothing whatever has been paid on the other bond, on which are now due and unpaid the sums following, to wit: seven hundred and eighty dollars, which fell due March 19th, A. D. 1841; nine hundred and seventy dollars and fifty-eight cents, due October 25th, 1841; nine hundred and thirty-five dollars and twenty-nine cents, due October 25th, 1842; nine hundred dollars, due October 25th, 1843; eight hundred and sixty-four dollars and sixty-nine cents, due October 25th, 1844; and five thousand two hundred and ninety-four dollars and fifteen cents, due October 25th, 1845; each of which sums by law bears interest from the time when it fell due, as aforesaid, until it shall be paid, at the rate of ten per centum per annum, and that each of sums is charged upon said bonds, and secured by said mortgage.

And the Court doth further think, determine, and adjudge, that if said mortgage had not been sufficiently recorded, yet that said George C. Breneman had actual notice thereof, before he purchased the same interest of said Cummins in said lands, and that by his purchase thereof, after decree herein, pro confesso, against him, and actual notice of said mortgage, he obtained in title paramount to the equity and lien of said complainants, but that they have the prior equity, and must prevail against him. It is therefore ordered, adjudged, and decreed, that unless said defendants, or one of them, do

pay to said complainants, on or before the first day of the next term of this Court, the said several sums of money so due as aforesaid, with interest on each as aforesaid, then and in default thereof, said mortgage be foreclosed, the equity of redemption of each and all said defendants in said lands barred, and said lands at public sale, to the last and highest bidder, for cash in hand, on the first day of the next term of this Court, between the hours for judicial sales, at the court-house door, in the County of Chicot, by William J. Neale, who is hereby appointed a commissioner to make said sale; that he give notice of said sale, by one advertisement, at least thirty days prior thereto, in the Arkansas State Gazette, a newspaper published in this State; that out of the proceeds of such sale, he pay first the expenses of sale and the costs of this suit, and then the sums and interest aforesaid, and the residue, if any, he pay into Court here, with his report.

The following is a copy of the prayer of I. N. Barnett, for appeal, which prayer is in the following words and figures, to wit:

SAM. C. ROANE and Others, Trustees of the Real Estate Bank of Arkansas,
v.
Administrator of WILLIAM CUMMINS, deceased, FREDERICK NOTREBE, GEORGE C. BRENEMAN, SAMUEL E. JONES, and MARY CUMMINS.

I, Isaac N. Barnett, attorney and agent of George C. Breneman, do solemnly swear, that the appeal prayed for and taken in this cause by said Breneman, is not made for vexation or delay, but because I verily believe that the appellant is grieved by the decision and decree of this Court, in this cause.

(Signed) J. N. BARNETT.

Subscribed and sworn to in open Court, November 15th, 1845.

W. J. NEALE,
Clerk.

Chicot Circuit Court. In Chancery. November Term, 1845.

George C. Breneman, impleaded with the above Defendants, Adm'r.

The above complainants, the defendant, George C. Breneman, one of the defendants in the above cause, by his solicitor, Barnett, comes, and prays the Court for an appeal, and appeals from the decision and decree of this Court, in the above entitled cause.

(Signed) GEORGE C. BRENEMAN.
By BARNETT,
His Solicitor.

The following is a copy of the Commissioners' Report of sale of lands, to wit:

"The undersigned commissioner, appointed by a decree of the Chicot Circuit Court, in Chancery, rendered at the last November Term, 1845, of said Court, in a certain suit therein depending, wherein Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, Jr., Anthony H. Davies, Silas Craig, Sandford C. Faulkner, George Hill, James H. Walker, Enoch J. Smith, and John Drennen, surviving trustees of the Real Estate Bank of the State of Arkansas, was plaintiffs, and Ebenezer Cummins, as administrator of the goods and chattels, rights and credits, which were of William Cummins, deceased, Frederic Notrebe, Mary Cummins, George C. Breneman, and Samuel E. Jones, defendants, to make of certain lands mentioned in said decree, report, that your commissioner, in pursuance of said decree, advertised the lands therein mentioned, designated, and described, hereinafter set forth, in the Arkansas State Gazette, a newspaper, printed in this State, by successive weekly insertions for two weeks, more than thirty days prior to the first day of the present term of your honorable Court, as will appear by the certificate of Benjamin J. Borden, the printer and publisher of said newspaper, verified on oath, and hereunto annexed, as part of this report, and on the second Monday of May, 1846, being the eleventh day of the month, and first day of the present term of your honorable Court, and the day appointed in said decree and named in said advertisement for the sale of *sale of* said lands, at the court-house door of Chicot County, between the hours for judicial sales, in conformity with the provisions of said decree, and said advertisement, your commissioner offered said lands, designated in said decree and advertisement, in the manner following, at public sale, to the last and highest bidder, for cash in hand, the said tracts being severally and separately offered. Terrence Farrelly, at the time and place and public sale aforesaid, being last and highest bidder, became the purchaser, for the several sums hereinafter named, annexed to each tract, to wit: the northeast fractional quarter of fractional section twenty-seven for the sum of sixteen hundred dollars, the southwest quarter of fractional section twenty-two for fifteen hundred dollars, the southeast quarter of section twenty-one for the sum of fifteen hundred dollars, the west half of section twenty-one for the sum of three thousand dollars, the northwest quarter of section twenty-eight for the sum of fifteen hundred dollars, the east half of section twenty-eight for the sum of two thousand dollars, and the southwest fractional quarter of fractional section twenty-three for five hundred and seventy-six dollars and forty-four cents, said lands all lying in Township nineteen south, of Range one west, being situate in said County of Chicot and State of Arkansas, and containing, in the whole, twelve hundred and eleven acres and 84-100 of an acre, and whole amount of the sale being eleven thousand six hundred and seventy-six dollars and forty-four cents, out of which sum your commissioner retained the sum of one hundred and seven dol-

lars and forty-six cents, being the amount of cost of suit, an allowing my fee as commissioner, and herewith annex the receipt of Albert Pike, Esq., attorney for the plaintiffs, and solicitor in said suit, for the sum of eleven thousand five hundred and sixty-eight dollars and ninety-eight cents, the balance of the purchase-money for said lands, all of which is respectfully submitted.

(Signed) W. J. NEALE,
May 12th, 1846. Commissioner.

Received, Columbia, May the 12th, 1846, of William J. Neale, Commissioner for the sale of the land mentioned and described in the foregoing report, the sum of eleven thousand five hundred and sixty-eight dollars and ninety-eight cents, being the balance of the purchase-money, after deducting the payment of costs and commissioner's fees.

(Signed) ALBERT PIKE,
Attorney of Complainants.

Dollars $11,568 98.

Commissioner's Sale.

Pursuant to a decree rendered by the Chicot Circuit Court, in Chancery, at the November Term, 1845, wherein Sam. C. Roane and others were plaintiffs, and Ebenezer Cummins, as administrator of William Cummins, deceased, Frederic Notrebe, Mary Cummins, George C. Breneman, and Samuel E. Jones, were defendants, I, William J. Neale, Commissioner under said decree, will expose to sale, and sell at the court-house door, in the town of Columbia, on the second Monday in May next, between the hours for judicial sales, the lands mentioned in said decree, to wit: The northeast fractional quarter of fractional section twenty-seven; the southwest quarter of fractional section twenty-two; the southeast quarter of section twenty-one; the west half of section twenty-one; the northwest quarter of section twenty-eight; the east half of section twenty-eight; the southwest fractional quarter of fractional section twenty-three; all in township nineteen south, of range one west, and containing together twelve hundred and eleven $\frac{84}{100}$ acres of land. Which lands will be sold to the last and highest bidder for cash in hand, to satisfy the amount adjudged by said decree.

(Signed) W. J. NEALE,
Columbia, Ark., Dec. 17th, 1845. Commissioner.

State of Arkansas, County of Pulaski, Big Rock Township.

Be it remembered, that on this day, personally appeared before me, A. Smith, a Justice of the Peace in and for the township aforesaid, the undersigned, Benjamin J. Borden, Editor of the Arkansas State Gazette, who, being duly sworn, deposeth and saith, that an order of publication, in the case of Commissioner's sale, of which the

annexed is a correct copy, has been regularly published in said newspaper for two weeks in succession. The first insertion of which was on the 9th Feb. 1846, and the last on the 14th Feb. 1846.

(Signed) BENJ. J. BORDEN.

Sworn to and subscribed, this 22d day of April, A. D. 1846, before me.

A. SMITH,
Justice of Peace.

The following is a copy of the application of George C. Breneman to Chief Justice Thomas Johnson, for an appeal, which application are in the words and figures to wit:

State of Arkansas, *sct.*

To the Hon. Thomas Johnson, Chief Justice of the Supreme Court of the State of Arkansas. Your petitioner, George C. Breneman, herewith presents to your honor, a duly certified transcript of the record and proceedings in a certain case lately determined in the Chicot Circuit Court, in Chancery sitting, wherein Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, Jr., Anthony H. Davies, Sanford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, Lorenzo N. Clark, John Drennen, Robert S. Gibson, who sued as trustees of the Real Estate Bank of the State of Arkansas, and as successors and survivors in said trusteeship of Cary A. Harris, deceased, and James S. Conway and Daniel T. Witter, removed, were complainants, and Ebenezer Cummins, as administrator of William Cummins, deceased, Mary Cummins, Frederic Notrebe, Samuel E. Jones, and your petitioner, were defendants, and thereupon for the errors appearing in said record and proceedings, prays your honor to grant and allow him an appeal from the decision and decree of said Circuit Court to the Supreme Court of the State of Arkansas; and your petitioner will ever pray, &c.

(Signed) WATKINS & CURRAN,
Sols. for George C. Breneman.

Vide sec. 138, Tit. Chancery, Rev. Stat. Arks. p. 174.

State of Arkansas, *ss.*

On hearing the petition of George C. Breneman, one of the defendants in the case therein, for an appeal from the final decree of said Circuit Court in Chancery therein, to the Supreme Court of said State, and upon inspection and consideration of the transcript of the record in said cause, it appears to me, Thomas Johnson, Chief Justice of the Supreme Court of said State, that an appeal from said final decree to the said Supreme Court ought to be allowed; I do therefore hereby grant an appeal from said final decree of said Court,

agreeably to the prayer of said petitioner; and I do further order that all proceedings under and by virtue of said decree be stayed until said cause be adjudicated in said Supreme Court, on such appeal, on the said George C. Breneman with good security entering into recognizance in said cause, as required by law, in the penal sum of twelve thousand dollars.

Given under my hand, at my residence, in the County of Saline, in the State of Arkansas, this 19th day of December, A. D. 1845.

(Signed) THOMAS JOHNSON,
Chief Justice of the Supreme Court of Arkansas.

The following is a copy of the recognizance entered into, to wit:

State of Arkansas, *ss.*

Be it remembered, at a Supreme Court of the State of Arkansas, begun and held at the court-house in the City of Little , on the first Monday of January, A. D. 1846, amongst others were the following proceedings, to wit:

Monday, May 4th, A. D. 1846.

GEORGE C. BRENEMAN, Appellant,
v.
SAM'L C. ROANE, and others, who sue as Trustees of the Real Estate Bank of the State of Arkansas, Appellees.

On appeal from the decree of the Circuit Court of Chicot County, in Chancery sitting, in a case therein, wherein Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, Jr., Anthony H. Davies, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, Lorenzo N. Clarke, John Drennen, and Robert S. Gibson, who sue as trustees of the Real Estate Bank of the State of Arkansas, and were complainants, and Ebenezer Cummins as administrator of William Cummins, deceased, Mary Cummins, Frederic Notrebe, George C. Breneman, and Samuel E. Jones, were defendants.

At this day comes the said appellant by his solicitor, and by leave of the Court files his motion to reduce the amount of the recognizance, required by the order heretofore made, by the Chief Justice of this Court, granting the appeal in this case, to stay the proceedings under the decree of said Circuit Court, until the adjudication of this cause in this Court, on said appeal, and the Court being sufficiently advised of appellant's said motion, and it appearing to the Court that one thousand dollars are sufficient to cover all damages and costs that said appellees can sustain by delay of the proceedings under said decree, until the adjudication of this cause, in this Court, it is therefore ordered, that all further proceedings under said decree in said Circuit Court shall be stayed until the adjudication of this

cause in this Court, on said appeal, upon the said appellant, or some legally authorized person for him, with approved surety, entering into recognizance as required by law, in the penal sum of one thousand dollars.

Tuesday, May 5th, A. D. 1846.

At this day came George C. Watkins for said appellant, and James M. Curran, as surety, and offer to enter into recognizance in this case, as per order of Court entered herein, and being approved of and admitted by the Court, thereupon the said George C. Watkins, as principal, for George C. Breneman, and James M. Curran, as surety, acknowledge that they jointly and severally owe and are indebted unto said appellees, in the penal sum of one thousand dollars, to be levied on their goods and chattels, lands and tenements, to be void upon condition that the said appellants shall prosecute his appeal in this cause with effect, and shall perform such decree as shall be made by the Supreme Court herein, and pay the damages and costs which may be adjudged against him in this cause.

And it is ordered, that the Clerk of this Court shall certify, under his hand and official seal, a true and complete transcript of said recognizance and proceedings herein, to be filed in the office of the Clerk of said Circuit Court.

In testimony that the foregoing is a true and complete transcript of the orders of said Supreme Court and recognizance entered into therein in said cause, taken from the record of said Court of cases in Chancery, I, Luke E. Barber, Clerk of said Supreme Court, have hereunto set my hand and affixed the seal of said Court,

[L. S.] at office in the City of Little Rock, this 6th day of May, A.D. 1846.

(Signed) L. E. BARBER,
Clerk of the Supreme Court of Arkansas.

State of Arkansas, County of Chicot.

I, Samuel W. Cooper, Clerk of the Circuit Court in and for the County and State aforesaid, do hereby certify that the foregoing is a true copy of the bill in the case of the Trustees of the Real Estate Bank of the State of Arkansas versus Ebenezer Cummins, as administrator, Frederic Notrebe et al., together with the answer of George C. Breneman to the bill of complaint, the amendment to said bill, the deed from the U. S. Marshal for the District of Arkansas to George C. Breneman, the separate answer of said Breneman to the bill of complaint, the answer of I. N. Barnett to interrogations, the replication of Samuel C. Roane et al. to the answer of George C. Breneman, the answer of Mary Cummins by her guadian ad litem, the replication to the answer of Mary Cummins, the affidavit of Albert Pike, the interrogations to I. N. Barnett,

Esq., the facts agreed upon by complainants and said George C. Breneman, the final decree rendered in said cause, copied from the Record of said Circuit Court, the prayer of appeal and affidavit of I. N. Barnett, the report of Commissioner, the application of said Breneman to Chief Justice Thomas Johnson for appeal, and the recognizance entered into by George C. Watkins and James M. Curran as surety; which said papers are all on file in my office, in the suit therein mentioned, and all truly copied from the originals.

In testimony whereof I have hereunto set my hand, and
[L. S.] affixed the seal of my office at office in the Town of Columbia, this 21st day of January, A. D. 1852.

SAMUEL W. COOPER,
Clerk.

Filed 11th March, 1852.

WM. FIELD,
Clerk.

State of Arkansas, County of Chicot.

Pleas before the Honorable William H. Sutton, Judge of the Chicot Circuit Court, at the court-house of said County, on the 13th day of November, A. D. 1837.

Title.

GEORGE C. BRENIMAN, Complainant,
v.
EBENEZER CUMMINS, as administrator of WILLIAM CUMMINS, deceased, MARY CUMMINS, infant daughter and sole heir of said WILLIAM CUMMINS, FREDERICK NOTREBE, TERRENCE FARRELLY, and WILLIAM W. WOODFOLK, Defendant.

Be it remembered that heretofore, to wit, on the 9th day of July, 1847, came the complainant, and filed in the office of the clerk of said Circuit Court his bill of complaint against said defendants, which said bill of complaint are in the words and figures following, to wit:

Bill.

State of Arkansas, County of Chicot.

In the Circuit Court of Chicot County, in Chancery, to the November Term, 1847.

To the Hon. William H. Sutton, Judge of the Judicial Circuit of the State of Arkansas, sitting as Chancellor, in the County of Chicot, in said Circuit:

Your orator, George C. Breniman, of the State of Pennsylvania, would respectfully represent, that on the 19th day of April, A. D. 1842, your orator, as assignee of George Brungard, by the consideration and judgment of the Circuit Court of the United States in and

for the District of Arkansas, recovered against William K. Inglish and Thomas H. Johnson, then late partners in trade, under the style and firm of Inglish and Johnson, and Lorenzo Gibson, and William Cummins, the sum of seven thousand and six hundred dollars and twenty-four cents, which were adjudged to him for his damages, together with his costs in that behalf expended. Whereof the said parties are convict, as by the record thereof, in said Court remaining, will more fully appear, a certified copy whereof will be herewith filed and marked as Exhibit A, and prayed to be taken as part hereof.

And for having execution of said judgment, your orator, on the 7th day of February, A. D. 1843, sued out of the office of the Clerk of said Court of the United States a certain writ of fieri facias, in the name of the President of the United States, to the Marshal of the District of Arkansas directed. Which writ, after reciting the recovery as aforesaid, commanded the said marshal, that of the goods and chattels, lands and tenements of the said William K. Inglish, said Johnson, said Gibson, and said William Cummins, he should cause to be made the damages aforesaid recovered, with the costs aforesaid (which costs were therein taxed at the sum of eighty-seven dollars and three cents), so that he should have the same before the Clerk of said Court, at his office in the City of Little Rock, on the second day of the March term of said Court next thereafter, to be paid to said plaintiff. Which writ was duly attested, and under the seal of said Court, and the same afterwards duly came to the hands of said marshal, to be by him executed according to law, to wit, on the 13th day of February, 1843; and that Thomas W. Newton, who was then and from thence until and after the return day of said writ continued to be the Marshal of the United States for the said District of Arkansas, afterwards, in pursuance of the commands of said writ, to wit, on the day of A. D. 1843, and before the return day of said writ, levied the said writ of fieri facias on the following described tracts of land among others, to wit: the south fractional half of the northwest fractional quarter of fractional section ten (10), the northwest fractional quarter of the northwest fractional quarter of fractional section ten (10), the northeast fractional part (east of Grand Lake) of the northeast fractional quarter of fractional section nine (9), the southeast fractional quarter (east of Grand Lake) of fractional section four (4), the southwest quarter of fractional section three (3), all in Township 19 south, of Range one west, of fifth principal meridian; also upon the following lands, to wit: the west half of the southeast quarter of fractional section thirty-four (34), the southeast quarter of the northeast quarter of fractional section thirty-four (34), the north fractional half of northeast fractional quarter of fractional section thirty-four (34), the southwest quarter of northwest quarter of fractional section thirty-five (35), all in Township eighteen south, of Range one west. All the foregoing lands are in the said County of Chicot, and were levied upon, among

other lands, under and by virtue of said writ of fi. fa. by said marshal, as the property of said William Cummins, to satisfy the said damages and costs so recovered as aforesaid. But your orator represents that said marshal returned said writ without selling the foregoing lands, or any of them, or any other lands, goods, or chattels of any of said parties against whom said damages were recovered, alleging that he had not had time to advertise the same, and that said marshal returned said fi. fa. wholly unsatisfied, and certified that said damages and costs were wholly unsatisfied, all of which will more fully appear by a certified copy of said writ of fi. fa. which will in due time be filed and marked as Exhibit B, and prayed to be taken as part hereof.

And your orator would further represent that afterwards, to wit, on the 21st day of August, A. D. 1843, he sued out of the office of the Clerk of said Circuit Court of the United States, for the recovery of said damages and costs aforesaid, a certain other writ of execution of the United States, called a *venditioni exponas*, in the name of the President of the United States, to the marshal of the said district of Arkansas directed, which writ of *ven. ex.*, after reciting said recovery, and the issuance of the said writ of fieri facias, together with the proceedings, including the said levy on said lands, had, under and by virtue of said fi. fa., commanded the said marshal that he should expose to sale, and sell, as well the other lands levied on by him, by virtue of said fi. fa., as also all the foregoing described tracts of land, so levied on as aforesaid; and that he should cause to be made the damages and costs aforesaid (which costs were in said writ of *ven. ex.* taxed to the sum of one hundred and nine dollars and fifty-three cents), so that he should have the same before the Clerk of said Court, on the first Monday of January next, after the date of said writ, &c., which said writ of *ven. ex.*, being duly attested, and under the seal of said Court, afterwards, to wit, on the 21st day of August, 1843, came to the hands of Henry M. Rector, who was then, and from thence until and after the return day of said writ continued to be, Marshal of said District of Arkansas, in due form of law to be executed, by virtue of which said writ of *ven. ex.* the said Rector, as marshal as aforesaid, after having in all respects complied with the law and its requirements, did, on Monday, the 20th day of November, A. D. 1843, and before the return-day of said writ, at the court-house door of said County of Chicot, in the district aforesaid, among other lands exposed said lands to public sale to the highest bidder, and did then and there sell said lands to your orator for the price of fifty dollars, your orator then and there being the highest bidder for said land, which said price and sum of money was then and there paid for said land by your orator to said marshal, a memorandum whereof was then and there made by said marshal on said writ of ven. ex., all of which will more fully appear by reference to a certified copy of said writ of ven. ex., herewith filed, and prayed to be taken as part hereof, marked as Exhibit (C).

And your orator would further represent that, afterwards, to wit, on the 19th day of April, A. D. 1844, the said Rector, as marshal, and then being marshal, as aforesaid, of said district, did make, execute, and deliver to your orator a deed in fee simple for said lands (among other lands), duly and legally executed, and properly acknowledged and attested, by which, after reciting the proceedings, hereinbefore stated by your orator, he did, as such marshal as aforesaid, convey unto your orator, as your orator was then advised and believed, all the right, title, claim, and interest of said Cummins to said lands, which deed was afterwards, to wit, on the 31st day of May, A. D. 1844, filed for record, and duly recorded in the office of the Recorder, within and for said County of Chicot, where said lands lie, all which facts will fully appear by reference to said deed, a copy whereof is herewith filed, and marked as Exhibit (D), and prayed to be taken as part hereof.

Your orator would further represent, that said damages and costs still remain wholly unpaid and unsatisfied, except as to the of one hundred and fifty dollars, for which said lands and some other lands, of said Cummins was sold.

Your orator would further represent, that some time in the month of April, A. D. 1843, as your orator is informed, the said William Cummins departed this life, in the County of Pulaski, in said State of Arkansas, intestate, and that the administration of all and singular his goods and chattels, rights, credits, and effects, have been since, by the proper authorities, in said County of Pulaski, granted to Ebenezer Cummins, who has taken upon himself the burden of said administration, and whom your orator prays may be made defendant to this bill; and your orator further represents, that said William Cummins died, leaving Mary Cummins, and infant of tender age, daughter of said William, his sole and only heir, whom your orator prays may be made defendant to this bill.

Your orator further represents, that inasmuch as said William departed this life after the levy by said marshal of said fi. fa., on said lands, and before the issuance (or) execution of said writ of ven. ex., your orator is advised that it is doubtful whether the issuance of said ven. ex., and the proceedings thereunder had, including the said sale to your orator by said marshal, was regular and *valid* in law, to convey and transfer to your orator a good and indefeasible title to the claim of the said William Cummins, deceased, in and to said lands. Whereupon your orator applied to said Ebenezer, as administrator, and to said Mary, as heir as aforesaid, for such conveyance and assurances in the law, as would confirm the title of your orator; and your orator applied to said Ebenezer, as such administrator, to pay the balance of said damages and costs. Your orator well hoped that such his reasonable requests would be complied with, and that said defendants, Ebenezer and Mary, in their said capacities as aforesaid, would either have given to your orator such assurance and convey-

ance in the law, as would convey all the right, title, and claim, and interest of said William to said lands to your orator, or else that said Ebenezer, as administrator as aforesaid, would have paid to your orator the said damages and costs, which so remained unpaid and due to your orator as aforesaid. But now so it is, may it please your honor, that the said defendants, combining and confederating with others, to your orator unknown, and whom your orator prays may, when discovered, be made defendants hereto, and contriving how to injure your orator, refuse either to relinquish the claim of the said William, deceased, which he died seized and possessed of, to your orator, or to make the proper conveyance and assurances in law to your orator, to convey the said right, title, claim, and interest of said William, deceased, which he died possessed of in and to said lands; or else to pay to your the balance of said damages and costs, now due and unpaid, and owing to your orator, as in good conscience they ought to do.

Your orator would further represent, that on the 20th day of April, A. D. 1844, your orator, by the consideration and judgment of the said Circuit Court of the United States, under proceeding therein had on said judgment, herein referred to and marked as Exhibit (A), that said judgment was revived against said Inglish and Gibson, and against said Ebenezer, as administrator of said William Cummins, deceased, and said Johnson, having been declared a bankrupt, was released from said judgment, and that the lien of said judgment be continued, and that your orator, as assignee of said Brungard, have execution of said judgment against said Inglish and Gibson, and against Ebenezer, as administrator as aforesaid, to be levied of the assets of said William, deceased, in the lands of said Ebenezer unadministered; all which will more fully appear by reference to a certified copy of said proceedings and judgment of said Court, reviving said judgment, which will, in due time, be filed herewith, and prayed to be taken as part hereof, and marked as Exhibit (E).

Your orator would represent, that in all these matters and things he is without remedy at law, and relievable only in Chancery.

Your orator states, that said Ebenezer resides in the County of Pulaski, and said Mary in County of Arkansas, in the State of Arkansas aforesaid. Your orator knows of no other incumbrance on said lands; but if there be such, he prays that the persons interested therein may be made parties defendant hereto, and that every matter in which they are interested, properly cognizable in this cause, may be adjudicated upon by this Court, and the rights of all parties fully settled, and your orator's title quieted and protected against all such conflicting claims.

Wherefore your orator prays, that said Ebenezer, as administrator as aforesaid, and said Mary, as heir as aforesaid, and defendants as aforesaid, may be required to make full and perfect answer hereunto, according to the principles of equity. And your orator prays

this honorable Court, by its decree, to confirm the title of your orator to said lands so acquired by the sale by said marshal, and purchased by your orator of said lands as aforesaid, to quiet the title of your orator to said lands, and perpetually enjoin said defendants from in any wise disturbing or interfering with your orator's right, title, and claim in said lands so acquired as aforesaid, or else that an account may be taken by and under the decree of this honorable Court, of the balance of said damages, and interests, and costs, due and unpaid to your orator; and that said defendants may be decreed to pay the same to your orator, together with the costs of this suit, by a short day to be appointed by this Court for that purpose: your orator being then willing to relinquish all the claim to said lands, and to execute such conveyance, and do such acts as this Court may direct; and, in default of such payment, that it may be decreed by this Court that the said lands be sold to pay said arrearages due in law, damages and costs, or such part thereof said lands as may be necessary and proper; and that your orator may have such other and further relief as may be consistent with equity, your orator prays process of subpœna against said Ebenezer, as administrator as aforesaid, to the County of Pulaski, and against said Mary Cummins, to the County of Arkansas, and your orator will ever pray, &c.

(Signed) BARNETT,
Solicitor for Complainant.

The following is a copy of the writ of subpœna, together with the sheriff's return thereon, which issued in the foregoing case, and in the following words and figures, to wit:

Writ of Summons.

State of Arkansas, County of Chicot, *ss.*

The State of Arkansas to the Sheriff of the County of Pulaski, Greeting:

You are hereby commanded to summon Ebenezer Cummins, as administrator of the estate of William Cummins, deceased, if he be found within your county, to be and appear before the Judge of our Circuit Court, in Chancery sitting, at a Court to be holden at the court-house, in and for the County of Chicot, on Monday, the tenth day of November next, after the date hereof, then and there to answer a bill in Chancery, exhibited against him and Mary Cummins by George C. Breniman, and this he shall in no wise omit at his peril, and have you then and there the writ.

[SEAL.] In testimony whereof, I, Calvin Ashbrook, Clerk of the Circuit Court, in and for the County of Chicot, have hereunto set my hand, and affixed the seal of said Court, at my office, this 9th day of July, 1847.

(Signed) CALVIN ASHBROOK,
Clerk.

By JO. B. STEDMAN,
Deputy Clerk.

Return.

Came to hand, July 24th, A. D. 1847, and I hereby *I hereby* certify that I executed the within, by delivering a true copy thereof to Ebenezer Cummins, within mentioned, in the County of Pulaski, State of Arkansas, on the 24th day of July, 1847.

(Signed) A. J. HUTT,
Sheriff of Pulaski County.

Summons and Return.

State of Arkansas, County of Chicot, *ss.*

The State of Arkansas to the Sheriff of the County of Arkansas, Greeting:

You are hereby commanded to summon Mary Cummins, if she be found within your county, to be and appear before the Judge of our Circuit Court, in Chancery sitting, at a Court to be holden at the court-house, in and for the County of Chicot, on Monday, the tenth day of November next, after the date hereof, then and there to answer a bill in Chancery exhibited against her and Ebenezer Cummins, administrator of William Cummins, deceased, by George C. Breniman, and this she shall in no wise omit at her peril, and have you then and there this writ.

In testimony whereof, I, Calvin Ashbrook, Clerk of the Circuit Court, in and for the County of Chicot, have hereunto set my hand, and affixed the seal of said Court, at my office, this 9th day of July, 1847.

(Signed) CALVIN ASHBROOK,
Clerk.
By JO. B. STEDMAN,
Deputy Clerk.

Return.

State of Arkansas, County of Arkansas.

I certify that I served the within subpœna on the within-named defendant, Mary Cummins, by handing to her a true copy of the same, in the said County of Arkansas, on the day of September, 1847.

(Signed) JOHN L. JONES,
Sheriff of Arkansas County.

The following is a copy of the Transcript of Records of the Circuit of the United States, as exhibits in the case of George C. Breniman v. Ebenezer and Mary Cummins, which are in the words and figures, to wit:

Transcript of Circuit Court United States.

United States of America; District of Arkansas.

Pleas before the Honorable Peter V. Daniel, United States Circuit Judge, and Honorable Benjamin Johnson, United States District Judge for the district aforesaid, at the April Term, A. D. 1844. On the 20th day of April, A. D. 1844.

GEORGE C. BRENIMAN, as Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH and THOMAS H. JOHNSON, late Partners in trade, under the name, style, and firm of INGLISH & JOHNSON, LORENZO GIBSON, and EBENEZER CUMMINS, as Administrator of WILLIAM CUMMINS, deceased, Defendants.

On Scire Facias to review Judgment.

Declaration.

United States of America, District of Arkansas, to wit:

In the Circuit Court of the United States, within and for the District of Arkansas. To the March Term thereof, beginning and to be holden on the 4th Monday in March, A. D. 1841.

George Breniman, who is a citizen of the State of New York, assignee of George Brungard, who is a citizen of the State of Mississippi, plaintiff in this suit, by attorney, complains of William K. Inglish and Thomas H. Johnson, as copartners in trade, and trading and doing business in that behalf, at the several times hereinafter mentioned, by and under their copartnership name, firm, style, and description of "Inglish & Johnson," Lorenzo Gibson, and William Cummins, who are citizens of the State of Arkansas, defendants in this suit of a plea of trespass on the case upon promises.

For the said plaintiff declares and says, that the said defendants heretofore, to wit, on the fourth day of March, in the year of our Lord one thousand eight hundred and thirty-nine (March 4th, 1839), at Little Rock, that is to say, in the District of Arkansas aforesaid, and within the jurisdiction of this Court, made their certain joint and several promissory note in writing with their hands, that is to say, the said William K. Inglish and Thomas H. Johnson, as copartners as aforesaid, by and under their copartnership name, firm, style, and description of "Inglish and Johnson," the said Lorenzo Gibson, by and under the name, style, and description of "L. Gibson," and the said William Cummins, by and under the name, style, and description of "Wm. Cummins," the dates whereof is the day and year last aforesaid, and therein and thereby, then and there promised, twelve months after the date thereof, that they or either of them, jointly and severally, would pay George Brungard or order three

thousand three hundred and forty-six dollars and twenty-nine cents, without defalcation for value received, negotiable and payable in the Real Estate Bank of the State of Arkansas, at Little Rock, and then and there delivered the said promissory note to the said George Brungard.

And the said George Brungard, to whom or to whose order the payment of the said sum of money in the said promissory note specified was to be made, after the making of the said promissory note, before the payment of the said sum of money therein specified, to wit, on the day and year last aforesaid, indorsed the said promissory note, by which said indorsement he, the said George Brungard, then and there ordered and appointed the said sum of money, in the said promissory note specified, to be paid to the said plaintiff, and then and there delivered the said promissory note, so indorsed as aforesaid, to the said plaintiff, which promissory note and indorsement the said plaintiff shows now unto the Court here, by means whereof, and by force of the statute in such cases made and provided, the said defendants then and there became liable to pay to the said plaintiff the sum said sum of money in the said promissory note specified, according the tenor and effect of the said promissory note.

And the said plaintiff *plaintiff* in fact says, that afterward, and when the said promissory note became due and payable, according to the tenor and effect thereof, to wit, on the seventh day of March, in the year of our Lord one thousand eight hundred and forty, at the said Real Estate Bank of the State of Arkansas, at Little Rock, that is to say, at the said District of Arkansas, and within the jurisdiction of this Court, the said promissory note was duly presented and shown for payment thereof, and payment of the said sum of money, in the said promissory note specified, was then and there duly required, according to the tenor and effect of the said promissory note, but that neither the said Real Estate Bank of the State of Arkansas, at Little Rock, nor the said defendants, nor either of them, nor any other person or persons on behalf of the said defendants, did or would at the same time when the said promissory note was so presented and shown for payment thereof as aforesaid, or at any time before or afterwards, pay the said sum of money in the said promissory note specified, or any part thereof, but wholly neglected and refused so to do, of all which said several promises the said defendants afterwards, to wit, on the day and year last aforesaid, at the District of Arkansas aforesaid, severally had notice, by means whereof, and by force of the statute in such case made and provided, the said defendants then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, when they, the said defendants, should be thereunto afterwards requested; and being so indebted, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the District of Arkansas aforesaid, and within the jurisdiction as aforesaid,

undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money, in the said promissory note specified, when they, the said defendants, should be thereunto afterwards requested.

And the said plaintiff further declares and says, that the said defendants, heretofore, to wit, on the fourth day of March, one thousand eight hundred and thirty-nine, at Little Rock, that is to say in the District of Arkansas aforesaid, and within the jurisdiction of this Court, made then certain other joint and several promissory note, in writing, signed with their hands, that is to say, the said William K. Inglish and Thomas H. Johnson, as copartners, as aforesaid, by and under their copartnership name, firm, style, and description, of "Inglish & Johnson," the said Lorenzo Gibson by and under the name, style, and description of L. Gibson, and the said William Cummins by and under the name, style, and description of "Wm. Cummins," the sale whereof is the day and year last aforesaid, and therein and thereby, then and there, promised, twelve months after the date thereof, that they, or either of them, jointly and severally, would pay George Brungard, or order, three thousand three hundred and forty-six dollars and twenty-nine cents, without defalcation, for value received, negotiable and payable in the Real Estate Bank of the State of Arkansas, at Little Rock, and then and there delivered the last-mentioned promissory note to the said George Brungard, and the said George Brungard, to whom, or to whose order, the payment of the said sum of money, in the said last-mentioned promissory (——) specified, was to be made, after the making of the said last-mentioned promissory note, before the payment of the said sum of money therein specified, or any part thereof, to wit, on the day and year last aforesaid, at the District of Arkansas aforesaid, and within the jurisdiction of this Court, indorsed the said last-mentioned promissory note, by which said indorsement, he, the said George Brungard, then and there ordered and appointed the said sum of money in the said last-mentioned promissory note specified, to be paid to the said plaintiff, and then and there delivered the said last-mentioned promissory note to the said plaintiff, which said last-mentioned promissory note, with the indorsement aforesaid, the said plaintiff shows now unto the Court, hereby means, whereof and by force of the statute in such case made and provided, they, the said defendants, then and became liable to pay to the said plaintiff the said sum of money, in the said last-mentioned promissory note specified, according to the tenor and effect thereof, and being so liable, they, the said defendants, in consideration thereof afterwards, to wit on the day and year last aforesaid, at the District of Arkansas aforesaid, and within the jurisdiction of this Court, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money, in the said last-mentioned promissory note specified, according to the tenor and effect thereof; and the said plaintiff

further declares and says, that the said defendants heretofore, to wit, on the fourth day of March, in the year of our Lord one thousand eight hundred and thirty-nine, at Little Rock, that is to say in the District of Arkansas aforesaid, did, and within the jurisdiction of this Court, made their certain other joint and promissory notes, in writing, signed with their own hands, that is to say, the said William K. Inglish and Thomas H. Johnson, copartners as aforesaid, by and under their copartnership name, firm, style, and description of "Inglish & Johnson," the said Lorenzo Gibson, by and under the name, style, and description, "L. Gibson," and the said William Cummins by and under the name and description of "Wm. Cummins," the date whereof is the day and year last aforesaid, and therein and thereby, and then and there, promised, eighteen months after the date thereof, that they, or either of them, jointly and severally, would pay George Brungard, or order, three thousand four hundred and fifty dollars, without defalcation, for value received, negotiable and payable in the Real Estate Bank, of the State of Arkansas, at Little Rock, and then and there delivered the said last-mentioned promissory note to the said George Brungard, and the said George Brungard, to whom or to whose order the payment of the said sum of money, in the said last-mentioned promissory note specified, was to be made, after the making the said last-mentioned promissory note, before the payment of the said sum of money therein specified, to wit, on the day and year last aforesaid, in the District of Arkansas aforesaid, and within the jurisdiction of this Court, indorsed the said last-mentioned promissory note *promissory note*, by which said indorsement, he, the said George Brungard, then and there ordered and appointed the said sum of money, in the said last-mentioned promissory note specified, to be paid to the said plaintiff, and then and there delivered the said last-mentioned promissory note to the said plaintiff, which said last-mentioned promissory note, as *as* aforesaid, indorsed, the said plaintiff shows now unto the Court here, by means, whereby, and by force of the statute in such case made and provided, they, the said defendants, then and there became liable to pay to the said plaintiff the said sum of money in the said last-mentioned promissory note specified, according to the tenor and effect of the said last-mentioned promissory note; and the said plaintiff in fact says, that afterwards, and when the said last-mentioned promissory note became due and payable, according to the tenor and effect thereof, to wit, on the seventh day of September, in the year of our Lord one thousand eight hundred and forty, at the said Real Estate Bank of the State of Arkansas, at Little Rock, that is to say, at the District of Arkansas, and within the jurisdiction of this Court, the said last-mentioned promissory note was duly presented and shown for payment thereof, and payment of the said sum of money in the said last-mentioned promissory note specified, was then and there, at the said Real Estate Bank, at Little Rock, duly re-

quired, according to the tenor and effect of the said last-mentioned promissory note, but that neither the said Real Estate Bank of the State of Arkansas, at Little Rock, nor the said defendants, nor either of them, nor any other person or persons on behalf of the said defendants, did or would, at the same time when the said last-mentioned promissory note was so presented and shown for payment thereof, as aforesaid, at any time, before or afterwards, pay the said sum of money in the said last-mentioned promissory note specified, or any part thereof, but wholly neglected and refused so to do; of all which said several promises the said defendants afterwards, to wit, on the day and year last aforesaid, at the District of Arkansas aforesaid, severally had notice, and by means whereof, and by force of the statute in such case made and provided, the said defendants, then and there, became liable to pay to the said plaintiff the said sum of money in the said last-mentioned promissory note specified, when they, the said defendants should be thereunto requested; and, being so indebted, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the District of Arkansas aforesaid, undertook, and then and there, faithfully promised the said plaintiff to pay him the said sum of money in the said last-mentioned promissory note specified, when they, the said defendants, should be thereunto afterwards requested.

And the said plaintiff further declares and says, that the said defendants heretofore, to wit, on the fourth day of March, in the year of our Lord one thousand eight hundred and thirty-nine (March 4th, 1839), at Little Rock, that is to say, in the District of Arkansas aforesaid, and within the jurisdiction of this Court, made their certain other joint and several promissory notes in writing, signed with their hands; that is to say, the said William K. Inglish and Thomas H. Johnson, as copartners as aforesaid, by and under their copartnership name, firm, style, and description of "Inglish & Johnson," the said Lorenzo Gibson, by and under the name, style, and description of "L. Gibson," and the said William Cummins, by and under the name, style, and description of "Wm. Cummins," the date whereof is the day and year last aforesaid, and therein and thereby, then and there promised, eighteen months after the date thereof, that they, or either of them, jointly and severally, would pay George Brungard or order, three thousand four hundred and eighty dollars, without defalcation, for value received, negotiable and payable in the Real Estate Bank in the State of Arkansas, at Little Rock, and then and there delivered the last-mentioned promissory note to the said George Brungard, and the said George Brungard, to whom or to whose order the payment of the said sum of money, in the said last-mentioned promissory note specified, was to be made after the making of the said last-mentioned promissory note, and before the payment of the said sum of money therein specified, or any part thereof, to wit, on the day and year last aforesaid, indorsed the said

last-mentioned promissory note, by which said indorsement he, the said George Brungard, then and there ordered and appointed the said sum of money, in the said last-mentioned note specified, to be paid to the said plaintiff, and then and there delivered the said last-mentioned and promissory note to the said plaintiff, which said last-mentioned promissory note, so as aforesaid indorsed, the said plaintiff shows now unto the Court here, by means whereof, and by force of the statute in such case made and provided, they, the said defendants, then and there became liable to pay to the said plaintiff the said sum of money in the said last-mentioned note specified, according to the tenor and effect of the said last-mentioned promissory note; and being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the District of Arkansas aforesaid, and within the jurisdiction of this Court, undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money, in the said last-mentioned promissory note specified, according to the tenor and effect thereof.

Nevertheless, the said defendants, not regarding the said several promises and undertakings, but contriving and fraudulently intending, craftily and subtly, to deceive and defraud said plaintiff in this behalf, hath not as yet paid the said several sums of money, or any or either of them, or any part thereof, either to the said George Brungard, before the making of the said indorsements, or to the said plaintiff since (although often requested so to do), but they the said defendants, *or* either of them, to pay the said several sums of money, or any part thereof, either to the said George Brungard, before the making of the said indorsement, or to the said plaintiff since, they the said defendants have, and each of them hath, hitherto wholly neglected and refused, and still do, and each of them doth neglect and refuse, to the damage of the said plaintiff of ten thousand dollars, and therefore he brings his suit, &c.

(Signed) ASHLEY & WATKINS,
Plaintiff's Attorney.

Obligation and Bonds for Costs.

I, Chester Ashley, acknowledge myself security for all costs for which the plaintiff may be liable in this suit.

(Signed) CHESTER ASHLEY.

Precipe.

Upon filing the above annexed within and foregoing declaration and obligation for costs in his office, the Clerk of the Circuit Court of the United States, within and for the District of Arkansas, will *pleas* issue a writ of summons, in conformity therewith, directed, &c., commanding, &c., returnable, &c., according to law.

(Signed) ASHLEY & WATKINS,
Attorneys for Plaintiff.

Indorsement on Declaration.

On the back of the declaration is the following indorsement, to wit: Filed in my office and writ issued, this 6th day of February, A. D. 1841.

Attest, W. FIELD, Clerk,

By W. H. RINGO, Deputy Clerk.

Writ of Summons.

[SEAL.] The United States of America to the Marshal of the Arkansas District, greeting:

You are hereby commanded to summon William K. Inglish and Thomas H. Johnson, as copartners, &c., under the name, firm, style, and description of "Inglish & Johnson," Lorenzo Gibson and William Cummins, if they be found within your bailiwick, to appear before the Judge of our Circuit Court of the United States in and for the District of Arkansas, at the court-house in the City of Little Rock, on the first day of our next March term, to answer George Breniman, assignee of George Brungard, to a plea of trespass on the case upon promises, to his damage of ten thousand dollars. In testimony whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court, hath caused the seal thereof to be hereunto affixed, this 6th day of February, A. D. 1841, and in the sixty-fifth year of our independence.

(Attest) W. FIELD, Clerk.

By W. H. RINGO. Deputy Clerk.

The following is the indorsement on said writ of summons, to wit: executed the within on Wm. K. Inglish, by reading, and on William Cummins, by delivering a copy to a white member of his family over the age of fifteen years. Done in the City of Little Rock, County of Pulaski, District of Arkansas, February 9th, 1846. Service of writ on two, 4 00; mileage E. Rector, Marshal, by John K. Taylor, Dep.

Indorsement on Writ.

Executed the within on Lorenzo Gibson, one of the defendants, by reading the same to him, in the town of Little Rock, on the 10th day of February, 1841; service, $2 00; E. Rector, Marshal; by Saml. M. Rutherford, D.M.

Executed the within on Thomas H. Johnson, by reading the same to him, in Crawford County, on the 20th day of February, 1841;

service $2 00; 360 cir. milage, 5 per cent. 18 00; total, $20 00; E. Rector, Marshal, by A. V. Brookin, Deputy.

GEORGE BRENIMAN, Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH, and THOMAS H. JOHNSON, partners under the name and style of INGLISH & JOHNSON, LORENZO GIBSON, and WM. CUMMINS, Defendants. } Assumpsit.

This day came the said parties by their attorneys, and the said defendants files their first and second pleas, in this case, and the plaintiff files his joinder to the said defendants' first plea, and his demurrer to the said second plea, and the said defendants file joinder to said plaintiffs' demurrer to said second plea, whereupon the matters of law thereon coming up for hearing, and the argument not being concluded, this case is continued until to-morrow.

In the Circuit Court of the United States, March term, 1841, for the Arkansas District.

WILLIAM K. INGLISH, THOMAS H. JOHNSON, LORENZO GIBSON, and WILLIAM CUMMINS,
ads.
GEORGE BRENIMAN, Assignee.

The said defendants come, &c., when, &c., and say, that they did not undertake and promise, in manner and form as the said plaintiffs hath above thereof in said declaration or in either count thereof mentioned and declared against them, in manner and form as the said plaintiffs hath above thereof declared against them, and of this they put themselves upon the country.

(Signed) PIKE & FOWLER,
Attorneys for Defendants.

And the said plaintiffs doth the like.

ASHLEY & WALKINS,
Plaintiffs' Attorneys.

Arkansas, *sct.*

I, William K. Inglish, do solemnly swear that the foregoing plea, and the matters therein contained, are true, in substance and in fact.

(Signed) W. K. INGLISH.

Sworn to and subscribed in open Court this 27th day of March, A. D. 1841.

WM. FIELD,
Clerk.
By W. H. RINGO,
Deputy Clerk.

Indorsed as follows: Filed April 2, 1841.

(Signed) WM. FIELD, Clerk.

By W. H. RINGO, Deputy Clerk.

In the U. S. Circuit Court, for the Arkansas District, at the March term, 1841.

WILLIAM K. INGLISH, THOMAS H. JOHNSON, LORENZO GIBSON, and WILLIAM CUMMINS, *ads.* GEORGE BRENIMAN, Assignee.

And for a further plea in this behalf, by leave of the Court, &c., the said defendants say, *actionem non*; because they say that the day of the date of each said promissory notes in said declaration mentioned, was not inserted when the same were executed by these defendants, and that the day of the date of each said notes was thereafter supplied by said George Brungard, by the said George Brungard inserting in the date of each said note the figure 4, contrary to the express direction and without the consent of these defendants or either of them; and so they say that they did not *not*, nor either of them execute said notes, or either of them; and this they are ready to verify. Wherefore they pray judgment if the said plaintiff his action aforesaid thereof against them ought to have or maintain.

(Signed) PIKE.

Arkansas, *sct.*

I, William K. Inglish, do solemnly swear, that the matters and things set forth in the foregoing plea are true, in substance and in fact.

(Signed) W. K. INGLISH.

Sworn to and subscribed, in open Court, this 24th day of March, A. D. 1841.

(Signed) W. FIELD, Clerk.

By W. H. RINGO, Deputy Clerk.

On which is the following indorsement, to wit:

Filed April, 2d 1841.

(Signed) WM. FIELD, Clerk.

By W. H. RINGO, Deputy Clerk.

United States Court, District of Arkansas. March Term, 1841.

GEORGE BRENEMAN, Assignee,
v.
WILLIAM K. INGLISH, THOMAS H. JOHNSON, LORENZO GIBSON, and WILLIAM CUMMINS.

Demurrer.

And the said plaintiff by attorney comes and says, that the matters and things set forth in defendant's second plea, are not sufficient in law to bar said plaintiff from having and maintaining their aforesaid action, and this he is ready to verify. Wherefore, for want of a sufficient plea in this behalf, &c., plaintiff prays judgment, &c.

(Signed) ASHLEY & WATKINS,
Plaintiff's Attorney.

Joinder in demurrer.

FOWLER,
Am'd.

On which is the following indorsement, to wit:

Filed April 2, 1841.

WM. FIELD,
Clerk.
By W. H. RINGO,
Deputy Clerk.

Subpœna.

[SEAL.] The President of the United States of America to the Marshal of the Arkansas District, greeting:

You are hereby commanded to summon James A. Hutchins to appear before the Judge of our Circuit Court of the United States of America, in and for the District of Arkansas, at the court-house in the City of Little Rock, on Friday next of our present March Term, to testify and the truth to say, in behalf of the defendants in a certain matter of controversy in our said Court depending, between George Breniman, assignee of George Brungard, as plaintiffs, and William K. Inglish, Thomas H. Johnson, defendants; and this he shall in no wise omit, under the penalty of four hundred dollars; and have then and there this writ. In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Court to be hereunto affixed, this first day of April, A. D. 1841, and in the 65th year of our Independence.

Attest, W. FIELD,
Clerk.
By W. H. RINGO,
Deputy Clerk.

On which is the following indorsement, to wit: Executed by reading the same to the within named James A. Hutchins, April 2, 1841. E. Rector, Marshal, by Richard Halley; service 50 cents.

After which was the following entry on the record, to wit:

GEORGE BRENIMAN, Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH, et al., Defendants. } Assumpsit.

This day came the said parties by their attorneys, and the said plaintiff's demurrer to said defendant's second plea being further argued and submitted to the Court, and the Court being fully advised thereon, doth order that said demurrer be, and the same is, hereby sustained. Whereupon said defendants filed their motion and affidavit of William K. Inglish, for a continuance of this cause; and after argument of counsel, the Court, being fully advised concerning said motion, doth order that the same be sustained, and that this cause be continued until the next term of this Court; and that said defendants pay all the costs of this continuance. The following is the motion and affidavit, to wit:

In the United States Circuit Court for Arkansas, March Term, 1841.

WILLIAM K. INGLISH
v.
GEORGE BRENIMAN, Assignee.

The defendants move the Court to continue this case; and the said William K. Inglish, being duly sworn, on oath, states, that James A. Hutchings is a material witness for the defendants on the trial of this cause, and the said Hutchings was duly subpœnaed, at the instance of the defendants, on the second day of April last, to appear and testify here therein, but that said Hutchings has left this city in the Steamboat Governor Yell, and is now absent and not in attendance on the Court; that this deponent expects to prove, and believes that he will be able by him to prove, upon the trial hereof, that the note herein sued on was delivered to said Brungard some time in April, and as the deponent believes about the fourth day of April, A. D. 1839; and the said note was not then dated; that this deponent and said Johnson refused to permit said note to be dated, or the blank filled up, the same then being merely dated the day of March, A. D. 1839; and that said figure in the said note whereby the same appears to bear date the 4th day of March, A. D. 1839, was inserted after the delivery of said note; that said note was written by said Hutchings, and was neither delivered or written until said month of April, and was so antedated against the consent and direction of the defendants. This deponent further states, that there is no other witness by whom he or said defendants can, so far as he knows, prove

the same facts; that he has reason to believe that he can procure the testimony of said witness or his personal attendance by the next term of this Court; and that this application is not made for delay, but that justice may be done.

(Signed) W. K. INGLISH.

Sworn to and subscribed in open Court, this 4th day of July, A. D. 1841.

WM. FIELD, Clerk.
By W. H. RINGO, Deputy Clerk.

On which is the following indorsement, to wit:
Filed July 14th, 1841.

WM. FIELD, Clerk.
By W. H. RINGO, Deputy Clerk.

United States of America, District of Arkansas.

Clerk's Office, Circuit Court, United States. In Vacation, 15th Sept. A. D. 1841.

GEORGE BRENIMAN, Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH and THOMAS H. JOHNSON, co-partners, under the firm of INGLISH and JOHNSON, and LORENZO GIBSON, and WILLIAM CUMMINS, Defendants. } In Assumpsit.

This day came the aforesaid defendants, by their attorney, and on his motion it is ordered, that they have leave to take the depositions of witnesses *de bene esse*, to be read as evidence on the trial of this cause.

Attest, WM. FIELD, Clerk.

United States of America, District of Arkansas.

Clerk's Office, Circuit Court of the United States. In Vacation, 15th Sept. A. D. 1841.

GEORGE BRENIMAN, Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH and THOMAS H. JOHNSON, co-partners, under the firm of INGLISH and JOHNSON, and LORENZO GIBSON, and WILLIAM CUMMINS, Defendants. } In Assumpsit.

This day came the aforesaid defendants, by their attorney, and

on his motion it is ordered, that they have leave to take the depositions of witnesses *de boni esse*, to be read as evidence on trial of this cause.

Mr. George Breniman, plaintiff. Messrs. Chester Ashley and George C. Watkins (Ashley & Watkins), Attorney of record of said plaintiff.

Take Notice.

That by virtue of a commission, or dedimus postulatum, issued pursuant to a rule of which the above is a copy, I will attend at the office of the Clerk of the District Court of the United States, in the City of Little Rock, in Pulaski County and State of Arkansas, on the 22d, 24th, 27th, 29th, and 30th days of the present month (September, A. D. 1841), and on each and either of those days, to take the depositions of witnesses *de boni esse*, to be read in evidence on our behalf, on the trial of the above entitled cause, where and when you can attend if you think proper. Yours, &c.

Inglish and Johnson, and Gibson and Cummins, defendants, by their Attorney, Pike & Fowler, Sept. 18th, A. D. 1841, Little Rock.

On which is indorsed the following return, to wit:

Return.

This writ or notice came to hand on the 18th day of Sept. A. D. 1841, and was executed by delivering, on the evening of the same day, a true and correct copy thereof, to G. C. Watkins, one of the attorneys of record of the within-named Breniman, in the City of Little Rock, County of Pulaski, and State of Arkansas, which I herewith certify.

JAS. LAWSON, JUN.,
Sheriff of Pulaski County, Arkansas.
By JOHN L. ROTH,
Deputy Sheriff.

Service, 50 (cents); mileage do., 10; affidavit do., 50; total, $1 10.

On which notice is the following affidavit, to wit:

State of Arkansas, City of Little Rock.

This day, personally appeared before me, an acting Justice of the Peace, in and for the City and State aforesaid, John L. Roth, Deputy Sheriff of the County of Pulaski, and makes oath that the return made by him on the within notice is correct and true, and that said notice was received by him, and executed on the day therein named.

(Signed) JOHN L. ROTH.

Subscribed and sworn to before me, this 21st day of September, 1841.

ELI COLBY,
Justice of the Peace.

"And indorsed." Filed March 7th, 1842.

WM. FIELD,
Clerk.
By A. H. RUTHERFORD,
Deputy Clerk.

Entry in Record.

On the record is the following entry, to wit:

GEORGE C. BRENIMAN, Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH and THOMAS H. JOHNSON, late partners under the firm of INGLISH and JOHNSON, Defendants. } Assumpsit.

This day came the said plaintiff, by Ashley and Watkins, his attorneys, and filed his petition (verified by the oath of George C. Watkins), for a rule against the said defendants, for the production here in Court of a certain Invoice Book containing a list and description of the goods and merchandise sold to them by George Brungard, at or about the time the notes sued on in this case were executed. On motion thereof, it is ordered by the Court that the said defendants Inglish and Johnson be required to produce here in Court, on the sixth day of this present term, the said Invoice Book referred to in the plaintiff's petition, or that they then show cause why they should not do so, and that a copy of this order be served upon said defendants.

The following is the petition and affidavit, to wit:

United States of America, District of Arkansas, to wit:

In the Circuit Court, U. S. D. A. at March T., 1842.

GEORGE C. BRENIMAN, Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH and THOMAS H. JOHNSON, partners, &c., firm of "Inglish & Johnson," and LORENZO GIBSON and WILLIAM CUMMINS, Defendants. } Assumpsit.

The petition of the said plaintiff respectfully showeth, that the said Inglish and Johnson, during their late copartnership, and one of them, your petitioner knows not which, had and yet have under their or his control, and in their or his possession, a certain book, containing a list, invoice, or description of the lot of goods and merchandise sold to them by the said Brungard, at or about the time when the note sued

on in this case were executed and bear date, and in payment for which said notes were given, and near the end of which said invoice book was and is a contract or agreement in writing in regard to the sale of said goods, &c., from said Brungard to said Inglish and Johnson, and the terms and mode of payment therefor, &c., which said invoice book relates to and is essential to the merits of this suit, on behalf of said plaintiff, in view of the defence attempted to be set up by said defendant; and the plaintiff prays the Court here for a rule upon the said Inglish and Johnson to produce said invoice book in Court here by a day certain, or that they then show cause why the prayer thereof should not be granted, &c.

(Signed) ASHLEY & WATKINS,
Att'y for Plaintiff.

The following is the affidavit, to wit:

United States of America, District of Arkansas.

In the Circuit Court, U. S. D. A. at March Term, 1842.

The affidavit of George C. Watkins, an attorney of this Court, for and behalf of the plaintiff in the annexed, within, and foregoing petition named, takened, sworn to, and subscribed in open Court. This affiant, being first duly sworn, states that the said Breniman and Brungard are both non-residents of this State, and neither of them in attendance upon the Court here; that he, this affiant, of his own knowledge knows nothing of the allegations and facts stated in said petition, but according to his best knowledge and information derived from others he verily believes the same to be true as therein stated.

(Signed) GEO. C. WATKINS.

Sworn to and subscribed in open Court, this 30th day of March, A. D. 1842.

(Signed) WM. FIELD,
Clerk.

On which is the following indorsement, to wit:

Filed March 30th, 1842.

(Signed) WM. FIELD,
Clerk.

Subpœna.

[SEAL.] The President of the United States of America to the Marshal of the Arkansas District, greeting.

You are hereby commanded to summon James A. Hutchings to appear before the Judge of our Circuit Court of the United States of America, in and for the District of Arkansas, at the court-house in Little Rock, on the fourth day of our present March Term, next, to testify, and the truth to say, in behalf of the plaintiff, in a certain matter of controversy in our said Court depending between George C. Breniman, assignee of George Brungard, plaintiff, and "Inglish

and Johnson," and Lorenzo Gibson, and William Cummins, defendants, and this he shall in no wise omit, under the penalty of four hundred dollars, and have then and there this writ. In testimony whereof Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Court to be hereunto affixed this 30th day of March, A. D. 1842, and in the 66th year of our independence.

Attest. WM. FIELD, Clerk.

On which is the following return "indorsed, to wit," Executed by reading the within to the within-named Jas. A. Hutchings, in Little Rock, District of Arkansas, March 30th, A. D. 1842.

(Signed) THOS. W. NEWTON, Marshal.

By R. T. REDMAN, Deputy Marshal.

Service, . .	50
Mileage, . .	10
	$0 60

Order. Filing.

GEORGE BRENIMAN, assignee of GEORGE BRUNGARD, Plaintiff.
v.
WILLIAM K. INGLISH and THOMAS H. JOHNSON, partners in trade under the name, style, and firm of "Inglish & Johnson," Defendants. } Assumpsit.

Response to Rule.

This day came the said defendants, William K. Inglish, by Fowler, his attorney, in obedience to a rule of this Court, entered on a previous day of this term against him, for the production of a certain Invoice Book, and filed his response herein, and therefore prayed to be discharged from said rule, with his costs, &c.

In the Circuit Court of the United States for the District of Arkansas, March Term, A. D. 1841.

GEORGE BRENIMAN, assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH and THOMAS H. JOHNSON, partners, &c., and others, Defendants. } Assumpsit.

The said defendant, William K. Inglish, in response to the rule entered against him on the petition of the said plaintiff, for the production of a certain supposed Invoice Book, alleged to be under his control and in his possession, states and says, he had not now nor had he, as stated in said petition, any such Invoice Book in his pos-

session or under his control at any time; and that the invoice which the said Inglish & Johnson, as such partners, had during such partnership, in relation to their transaction with said Brungard, was drawn on loose pieces of paper, and have been lost or mislaid by time and accident, according to the best belief of the said Inglish, and cannot be by him now produced to the Court here. And, therefore, he prays to be discharged from said rule with his costs, &c.

(Signed) W. K. INGLISH.

Sworn to and subscribed in open Court, 2d April, 1842.

(Signed) WM. FIELD, Clerk.

By A. H. RUTHERFORD, Deputy Clerk.

Indorsed, Filed 2d April, 1842.

(Signed) WM. FIELD, Clerk.

By A. H. RUTHERFORD, Deputy Clerk.

Subpœna.

[SEAL.] The President of the United States of America to the Marshal of the Arkansas District: greeting.

You are hereby commanded to summons James A. Hutchings to appear before the Judge of our Circuit Court of the United States of America, in and for the District of Arkansas, at the court-house in Little Rock, on Tuesday, the 20th day of our present March Term, to testify and the truth to say in behalf of the defendants, in a certain matter of controversy in our said Court depending, between George Breneman, assignee of George Brungard, plaintiff, and William K. Inglish, Thomas H. Johnson, and others, defendants; and this he shall in no wise omit, under the penalty of four hundred dollars; and have then and there this writ.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, has caused the seal of said Court to be hereunto affixed, this 18th day of April, A. D. 1842, and in the 66th year of our Independence.

Attest, WM. FIELD, Clerk.

By A. H. RUTHERFORD, Deputy Clerk.

Returned.

The following is the indorsement thereon, to wit:

Executed the within on the within-named Jas. A. Hutchings, by reading the same to him, at Little Rock, District of Arkansas, on the 18th day of April, A. D. 1842.

THOS. W. NEWTON, U. S. Marshal.

By R. T. REDMAN, Deputy Marshal.

Fees:—Service, .50
Mileage, .10

$ .60

[SEAL.] The President of the United States of America, to the Marshal of the Arkansas District, greeting. You are hereby commanded to summon Eli Colby to appear before the Judge of our Circuit Court of the United States of America, in and for the District of Arkansas, at the court-house in Little Rock, *instanter* of our present March term, next, to testify, and the truth to say, in behalf the defendants, in a certain matter of controversy in our said Court depending, between George Breniman, assignee of George Brungard, plaintiff, and William K. Inglish, Thomas H. Johnson, and others, defendants; and this he shall in no wise omit, under the penalty of four hundred dollars; and have then and there this writ. In testimony whereof, Roger B. Taney, Chief Justice of the United States, has caused the seal of said Court to be hereunto affixed, this 19th day of April, A. D. 1842, and in the 66th year of our Independence.

Attest, WM. FIELD,
Clerk.
By A. H. RUTHERFORD,
Deputy Clerk.

The following is the indorsement on said writ, executed 19th day of April, 1842.

THOS. W. NEWTON,
Marshal.
By B. T. REDMAN,
Deputy Marshal.

Fees:—Service, .50
Mileage, .10

$ .60

Subpœna.

[SEAL.] The President of the United States of America to the Marshal of the Arkansas District, greeting: You are hereby commanded to summons Jesse B. Badgett, John W. Craney, and Lemuel B. Lincoln, to appear before the Judge of our Circuit Court of the United States of America, in and for the District of Arkansas, at the court-house in Little Rock, on the day of our present term, next, to testify, and the truth to say, in behalf of George Breniman, assignee, in a certain matter of controversy in our said Court depending, between George Breniman, assignee, plaintiff, and William K. Inglish, and others, defendants; and this they shall in no wise omit, under the penalty of four hundred dollars; and have then there this writ.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Court to be hereunto affixed this 19th day of April, A. D. 1842, and in the 66th year of our Independence.

Attest, WM. FIELD, Clerk.
By A. H. RUTHERFORD, Deputy Clerk.

On which is the following return, to wit:

Executed at Little Rock, Arkansas, on the 19th April, 1842, by reading this subpœna to the within-named Jesse B. Badgett, and Lemuel B. Lincoln—the within-named John W. Craney, not found.

THOS. W. NEWTON, Marshal.
By GEO. A. WORTHEN, Deputy Marshal.

Service, . .	50
1 non est, . .	25
Mileage, . .	10
Service, . .	50
	$1 35

Judgment.

Tuesday morning, April 19th, A. D. 1842, the following proceedings were had, to wit:

GEORGE BRENIMAN, assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH and THOMAS H. JOHNSON, co-partners in trade, under the name, style, and firm of INGLISH & JOHNSON, LORENZO GIBSON, and WM. CUMMINS, Defendants. } Assumpsit.

This day came the said plaintiff, by Ashley & Watkins, his attorneys, and the said defendants by Fowler, Trapnall & Cummins, their attorneys; and on motion it is ordered by the Court, that a jury be summoned in this case. Thereupon the Marshal returned the following persons, to wit: Charles Rapley, James Pitcher, William Brown, Benjamin Linebaugh, Jacob Mitchell, John Anderson, Samuel P. Badgett, Norman Boardman, George Waring, Elias Good, James De Baun, and John G. Pratt, twelve good and lawful men, was duly tried, empanelled, sworn, and charged, to try the issue joined in this case, and a true verdict render according to evidence, and after hearing the testimony adduced in this case, and the argument of counsel, and the instructions of the Court, returned the following verdict, to wit: "We, of the jury, do find for the within-named plaintiff, and that the defendants within-named did assume and promises,

in manner and form, as charged in the within declaration, and assess the plaintiff's damages, by reason of the non-performance of the promises and undertakings within-mentioned, to the sum of seven thousand six hundred dollars and twenty-four cents (say $7600 $\frac{24}{100}$). J. De Baun, foreman thereof. On motion, it is considered by the Court here, that the said plaintiff do have and recover of and from the said defendants said sum of seven thousand six hundred dollars and twenty-four cents ($7600 $\frac{24}{100}$), the damages so, as aforesaid, assessed, also all the costs in and about this suit in this behalf expended, and that the said defendants be in mercy, &c.

Order for leave to move for new trial and arrest of judgment.

April 22d, A. D. 1842, the following entry was made, to wit:

GEORGE BRENIMAN, assignee of GEORGE BRUNGARD, Plaintiff, *v.* WILLIAM K. INGLISH & THOMAS H. JOHNSON, partners under the name, style, and firm of INGLISH & JOHNSON, LORENZO GIBSON and WILLIAM CUMMINS, Defendants. } Assumpsit. Motion.

This day came the said defendants, by their attorney, and filed their motion in this case, whereupon it is ordered by the Court, that they have leave to move for a new trial in arrest of judgment, on or before Tuesday next, and that the time for making these motions be extended to embrace Tuesday next, on the grounds that the bill of exceptions has not yet been completed.

The following is the motion, to wit:

GEORGE BRENIMAN, assignee of GEORGE BRUNGARD, *v.* In the INGLISH & JOHNSON et others.

Motion.

On motion of the defendants in this cause it is ordered, that they have leave to move for a new trial in arrest of judgment on or before Tuesday next, and that the time for making these motions be extended to embrace Tuesday next, on the ground that the bill of exceptions has not yet been completed.

May 4th, 1842, the following order was had, to wit:

GEORGE BRENIMAN, assignee of GEORGE BRUNGARD, Plaintiff, *v.* WILLIAM K. INGLISH and THOMAS H. JOHNSON, partners under the name, style, and firm of "INGLISH & JOHNSON," and LORENZO GIBSON and WILLIAM CUMMINS, defendants. } Assumpsit.

Remitter.

And now at this day comes into open court here the said plaintiff, by his attorney, Ashley & Watkins, and on his motion, and by leave of the Court here, for that purpose first had and obtained, doth fully, freely, and absolutely remit and release unto the said defendants, of the judgment heretofore during the present term of this Court rendered in this case, the sum of eight hundred and eighty-one dollars and forty-eight cents (say $881 $\frac{48}{100}$), being the aggregate of the several sums named and credits claimed in the "letter of Inglish & Johnson, dated at Little Rock, January 10, 1840, to the said Breniman, addressed to him at Vicksburg, Mississippi, referred to and set out in the bill of exceptions in this case, to wit: $164 $\frac{33}{100}$, for "error in invoice," $410 $\frac{00}{100}$ interest on the two last notes, &c., and one hundred and fifty dollars for horse, saddle, and bridle, being altogether seven hundred and twenty-four dollars and seventy-eight cents (say $724 $\frac{78}{100}$), with lawful interest from the said fourth day of March, 1839, to this date, amounting to the said sum of eight hundred and eighty-one dollars and forty-eight cents (say $881 $\frac{48}{100}$), above thereof by the said plaintiff freely remitted and released, to the said defendants, of the judgment aforesaid; to be a credit upon and to go in satisfaction and discharge of so much of the judgment aforesaid.

Bill of Exceptions filed.

May 4th, 1842, the following orders was had, to wit:

GEORGE BRENIMAN, assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. ENGLISH, THOMAS H. JOHNSON, partners, &c., under the name, style, and firm of INGLISH & JOHNSON, and LORENZO GIBSON, and WILLIAM CUMMINS, Defendants. } Assumpsit.

This day came the said defendants, by attorney, and on motion, and by leave of the Court, filed their *Bill of Exceptions* in this case.

The following is the Bill of Exceptions, filed May 4th, A. D. 1842, to wit:

Circuit Court of the United States, for the District of Arkansas, March Term, 1842.

GEORGE BRENIMAN, assignee of GEORGE BRUNGARD,
v.
WILLIAM K. INGLISH, THOMAS JOHNSON. } Assumpsit.

Be it remembered, that on the trial of this cause, the plaintiff called witnesses to prove the handwriting of defendants to the pro-

missory notes declared on and exhibited in evidence, which said notes are in the following words and figures, to wit:

$3346 29. LITTLE ROCK, March 4th, 1839.

Twelve months after date, we, or either of us, jointly and severally, promise to pay George Brungard, or order, three thousand three hundred and forty-six dollars and twenty-nine cents, without defalcation, for value received, negotiable and payable in the Real Estate Bank of the State of Arkansas, at Little Rock.

INGLISH & JOHNSON.
L. GIBSON.
WM. CUMMINS.

Indorsed on the back, "Pay the within to George Breniman."
GEO. BRUNGARD.

$3480 LITTLE ROCK, March 4th, 1839.

Eighteen months after date, we, or either of us, jointly and severally, promise to pay George Brungard, or order, three thousand four hundred and eighty dollars, without defalcation, for value received, negotiable and payable in the Real Estate Bank of the State of Arkansas, at Little Rock.

"Indorsed, "Pay the within to George Breniman."
GEORGE BRUNGARD.
INGLISH & JOHNSON.
L. GIBSON,
WM. CUMMINS.

Whereupon the defendants waived the necessity of proof, and admitted the handwriting to be the signatures of the defendants. The plaintiff proved that the defendants, Johnson and English, were partners as merchants in the winter and spring of 1839. The defendants then called a witness, who, being sworn, stated that, in the latter part of February, or the first part of March, 1839, he was employed as clerk for defendants, Johnson and English, and assisted an inventory or invoice of goods purchased by them of George Brungard; that he commenced making said inventory about the last of February, or the first of March, 1839, and completed it in about three weeks; that after completing the inventory, he wrote the body of the promissory notes before stated, except the words "March 4th," and that defendant, Johnson, wrote the word "March" in the body of said notes, leaving the date blank. That he saw said Johnson sign the name of English and Johnson to said notes. That he, witness, was present when said Johnson delivered said notes to said Brungard, about the 23d March, 1839; and that Johnson and Brungard differed about interest, and he believed about the dates of said notes, and made a memorandum in writing on the inventory about the interest and date, and believes Johnson kept the inventory. The plaintiff

then objected to any parol evidence relating to the date of said notes, as it appeared there was a writing in defendants' possession touching the same, and the Court sustained the objection. The defendants then produced the following paper, hereto annexed, marked A, which witness stated to be a part of said inventory or invoice, in which is the following writing, to wit: The above interest which has been included to this invoice, I bind myself to take off of the notes given for that amount if it was not the agreement with Mr. W. K. English and myself, when the purchase was made by him.

GEO. BRUNGARD.

The witness, after seeing the above writing, stated that he believed it was the only writing made by Johnson and Brungard, on the inventory, relating to interest or date of said notes. The witness stated that he did not know the handwriting of said Brungard. The witness then further stated that Johnson and Brungard, at the time of the delivery of the notes to Brungard, disagreed about the date of the notes, and the date was left blank to be referred to English, as he had made the purchase. The plaintiff again objected to any parol evidence relating to the date of the notes, on the ground that the witness had stated that a written agreement about the date had been made by Johnson and Brungard on the inventory, and that only a part of the said inventory or invoice has been produced by defendants; which objection the Court sustained, and rejected the parol evidence relating to the date.

The plaintiff then read the following letters to the jury, in the following words and figures, to wit:

VAN BUREN, ARKANSAS, Feb. 10th, 1840.

Mr. G. Brungard.

Dear Sir,—Yours, under date the 27th of January, is now before me. You say you have transferred all your claims in this State, and should you not get to Little Rock by the first Monday in March, your design and agent to visit that place, for the purpose of arranging the business. When he arrives, he will find all the claims in the hands of proper officers, for collection, where they have been ever since last August. Every claim, except some few, where the person has an account against Mr. Brooker, I did not put into suit, for Mr. Trapnall thought it best not to do so. It is possible that I may be down in two or three weeks, but, at any rate, some time in next month; and as for the good showing you wish made by good arrangement, I can only exhibit the officers' receipts, and when there has been any money drawn out of their hands, it shall be accounted for by me in a proper manner. As for the amount due you by *English* & Johnson, it cannot be met at the times Mr. Breniman says the notes fall due. I have no recollection of those notes having been dated on the 6th of March, 1839. The notes, when I saw them last, were not dated at all, though be it. He shall be paid during the

months of their maturity, if it is possible to raise the funds by any means whatever.

Yours truly, THOS. H. JOHNSON.

Postmarked, Van Buren, Arkansas, Feb. 27, 1840.

Addressed, George Breniman, Esq., Vicksburg, Miss.

LITTLE ROCK, January 10th, 1840.

Mr. G. C. Breniman.

Dear Sir,—Having received a letter from you some short time since, informing us that you had the notes executed by us to G. Brungard, this letter we have delayed answering until the present time, for this reason. One of our firm has been expecting to go to New Orleans for the last two months, but, owing to circumstances unavoidable, he has been unable to leave. Relative to those notes, we have to say, that there should be a credit on the first one of $164 38, for error in invoice, and also a credit on the two last of the interest which has been included, amounting to $410 40, which credits we are entitled to, and shall contend for the same. We hold Mr. Brungard's obligation for the deduction of the interest, if Mr. W. K. English did not say it was the agreement, and the horse, saddle, and bridle which you spoke of. Mr. Johnson has charged him $150, in the books of Brooker & Johnson, for these articles, which was a reduced price.

Mr. Johnson expects to be in Vicksburg in a short time, when the matter will be settled.

Your obedient servants,

ENGLISH & JOHNSON.

Indorsed, Mr. George C. Breniman, Vicksburg, Miss.

The foregoing being all the evidence in the case, the Court gave the following instruction to the jury, on motion of the plaintiff:

1st. That a party who signs a promissory note, in blank, thereby authorizes the holder to whom he delivers it, to fill it up with any date or amount, and the maker or indorser, as the case may be, will be responsible.

2d. That under the plea of non-assumpsit, sworn to in this case, it devolves upon the defendants to prove that the blank date was filled up contrary to the agreement of the parties, and that the parties did agree upon some particular day different from that contained in the note.

3d. It being in evidence that the parties made a written memorandum of the points of difference at the time of the delivery of said notes declared in, no parol evidence is admissible, to contradict or vary that written agreement.

4th. That a deed or bond cannot be delivered to the obligee as an escrow, assimilating the notes in this case to a bond.

5th. That the filling up a blank date in a promissory note, by the

holder, to whom it was so delivered, is not in law an alteration or erasure of it.

The defendants' counsel then requested the Court to give to the jury the following instructions:

1st. That the holder of a note or bill of exchange not filled, or containing blanks, has no right to fill up those blanks at his discretion; the maker having objected to his exercising such power over such note or bill at the time it came to the hands of the holder, and the parties having agreed that the blanks or date should be filled up according to an agreement to be thereafter entered into with one of the makers, the date of such instrument having been left blank, on account of a difference between the parties on that point.

2d. That the power to fill dates or sums left blank, in a bill or note, rests only in the express or implied consent or intention of *the* parties drawing the same, that the holder shall fill said blanks; which said instructions the Court refused to give, but instructed the jury, that where the makers of a promissory note, with a blank, as to the day of the month, deliver it to the payee of said note, the payee is authorized by law to fill up said blank with any day of said month, unless there be an agreement at the time of delivering said note in blank, in relation to the filling up of said blank; in which event, the payer or holder has no right to fill the blank date, contrary to and different from the agreement.

The Court further observed to the counsel for the plaintiff, that if they requested it of the Court, it would instruct the jury, that when a note containing a blank as to the day of the month, is delivered by the maker to the payer, the payer has a right to fill up the blank, even contrary to any verbal agreement that might at the time be made in relation to said blank; but the counsel for the plaintiff declined asking for such instruction, and the Court did not give it to the jury, but gave the instructions as before stated; to the giving of the aforesaid instructions asked for by the plaintiff, and the refusal to give the aforesaid instruction asked by the defendants, the defendants excepted, and pray this their Bill of Exceptions may be signed and sealed, and made a part of the record, which is done accordingly.

(Signed) B. JOHNSON. [SEAL.]

NOTE.—No exceptions *wer* taken to the admission or rejection of evidence, but the above exceptions was taken to the instructions of the Court and refused to give at the time they were given to the jury.

(Signed) B. JOHNSON,
Judge.

On which is the following indorsement, to wit:

Filed May 4th, 1842.

WM. FIELD,
Clerk.

By A. H. RUTHERFORD,
Deputy Clerk.

Order to file motion in arrest of judgment.

May 4th, 1842, the following order was had, to wit:

GEORGE BRENEMAN, Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH and THOMAS H. JOHNSON, partners in trade, &c., under the style and firm of INGLISH & JOHNSON, and LORENZO GIBSON, and WILLIAM CUMMINS, Defendants. } Assumpsit.

This day came the said defendants, and on their motion and by leave of the Court, filed their motion in arrest of judgment in this case.

The following is the motion, to wit:

Circuit Court of United States, for Arkansas, March Term, A. D. 1842.

GEORGE BRENEMAN, Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH, THOMAS H. JOHNSON, late partners, under the style of INGLISH & JOHNSON, LORENZO GIBSON, and WILLIAM CUMMINS, Defendants. } Assumpsit.

On this day comes the said defendants, and by leave of the Court, the time for making and filing their motion having been extended by the Court until this day, move the Court to arrest the judgment herein, on the following grounds, to wit:

1st. That the Court improperly and without authority of law gave to the jury in this case, the first, second, third, fourth, and fifth instructions, asked for on the part of the said plaintiff; and that said instructions are contrary to law, and said fourth instruction, given on the part of said plaintiff, is wholly inapplicable to the case, and ought not to have been given.

2d. The court improperly refused to give to the jury the instructions asked for by said defendants in said cause.

And thereupon said defendants pray that said judgment may be arrested and set aside upon the grounds aforesaid.

FOWLER,
Attorney for Defendants.

On which is the following indorsement, to wit:

Filed May 4th, 1842.

WM. FIELD,
Clerk.
By A. H. RUTHERFORD,
Deputy Clerk.

May 7th, A. D. 1842, the following order was had, to wit:

GEORGE BRENEMAN, Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH and THOMAS H. JOHNSON, partners in trade, under the name, style, and firm of INGLISH & JOHNSON, and LORENZO GIBSON, and WILLIAM CUMMINS, Defendants. } Assumpsit.

And now, at this day, came the said parties, by their attorneys, and further argument of the counsel in this case, this Court being fully and sufficiently advised of and concerning the said defendants' motion for an arrest of judgment in this case, filed in a previous day of this term, doth overrule said motion.

Therefore, on motion and cause shown, it is ordered by the Court, that said plaintiff have leave to take out execution in this case immediately.

Execution.

United States of America, District of Arkansas, *sct.*

[L. S.] The President of the United States, greeting.

Whereas, George Breneman, Assignee of George Brungard, on the 19th day of April, A. D. 1842, in our Circuit of the United States, for the District of Arkansas, hath recovered against William K. Inglish and Thomas H. Johnson, late copartners in trade, under the name, style, and firm of Inglish & Johnson, and Lorenzo Gibson and William Cummins, the sum of seven thousand six hundred dollars and twenty-four cents ($7600 $\frac{24}{100}$) damages, together with the sum of eighty-one dollars and seventy-seven cents, for costs sustained in the suit. You are therefore commanded, that of the goods and chattels, lands and tenements of the said William K. Inglish, Thomas H. Johnson, Lorenzo Gibson, and William Cummins, you cause to be made the aforesaid, together with the costs aforesaid, so that you have the same before the Clerk of our said Court at his office, in the City of Little Rock, on the first Monday of October next, to be paid over to said plaintiff, and then and there certify how you have executed this writ.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Court to be hereunto affixed, this 7th day of May, A. D. 1842, and the 66th year of American independence.

Attest, WM. FIELD.
Clerk.
By A. H. RUTHERFORD,
Deputy Clerk.

Came to hand, 7th day of May, 1842, at half past 6 o'clock, P. M.

THOS. W. NEWTON,
United States Marshal.

By GEO. A. WORTHEN,
Deputy Marshal.

Return.

I hereby certify that I have not been able to find any goods, chattels, lands, tenements, or any property whatsoever, belonging to either William K. Inglish, Thomas H. Johnson, Lorenzo Gibson, or William Cummins, the within-named defendants, out of which can be made the damages and costs within written, or any part thereof. Oct. 3d, 1842.

THOS. W. NEWTON,
Marshal.

By GEO. A. WORTHEN,
Deputy Marshal.

Service and return,	$3 00
Mileage, . .	10
Nulla bona, . .	50
	$3 60

Remitter.

This execution is entitled to a credit of eight hundred and eighty-one dollars and forty-eight cents, being the amount that plaintiff entered a remitter for since judgment.

Attest, WM. FIELD.
Clerk.

By A. H. RUTHERFORD,
Deputy Clerk.

Oct. 15th, 1842, the following entry was had, to wit:

GEORGE BRENIMAN, Assignee, &c., Plaintiffs,
v.
WILLIAM K. INGLISH and Others, Defendants.
} Assumpsit.

Order.

This day came the defendants, by Cummins, attorney, and caused to be entered of record their motion, filed in writing with the clerk of this Court, on the first day of October, 1842, for the correction of the record in this case, and for a new trial.

Motion for Correction of Record and for New Trial.

Circuit Court of the United States, for the District of Arkansas. March Term, 1842.

GEORGE BRENIMAN, Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLAM R. INGLISH, THOMAS H. JOHNSON and Others, Defendants.
} Assumpsit.

On this appeared the said defendants, by attorney, and move the Court to amend and alter the bill of exceptions, filed in this case, on the ground that some of the statements therein contained are erroneous, and differ from the facts as they transpired on the trial of said cause before the jury.

The errors consist in the following particulars, to wit:

At *figure* 2, in the bill of exceptions, the witnesses is said to state, "That Johnson and Brungard differed about interest, and he believed about the date of said notes."

It is believed to be susceptible *of full* proof that the witness stated positively, that that was a difference about the interest and date of the notes; and that he believed a writing, relating to that difference, had been entered into between Johnson and Brungard; he was confident as to the interest, and believed the writing also relative to the date of the notes."

At *figure* 3, where it is stated, "the witness, after seeing the above writing," &c.

The witness, in addition to what is stated in the bill, stated "that the writing was on part of the inventory made out by himself and Johnson; that the writing, purporting to be signed by Brungard, was agreed to and executed between Johnson and Brungard in his presence; and that he believed it was the only writing on the subject, and was the writing he alluded to in his previous examination; and that he did not know the handwriting of Brungard; and that on seeing this handwriting, he was satisfied no writing had been made between them concerning the date of the notes."

At *figure* 4,—

The bill states that the parol evidence was rejected by the Court. This is a mistake. After the offer of the writing signed by Brungard, and the statement by the witness that that was the only writing, and that he then believed that the writing had no relation to the date, the Court allowed the testimony to be given to the jury, and no order was made about it until the final instructions were given.

The mistake in this particular will be apparent by reference to the instructions asked by plaintiff. He asks that the parol evidence should be rejected; would he ask, and the Court give this instruc-

tion, if this evidence had previously rejected? It is impossible to suppose this, and these instructions were written down at the time, and whilst the jury was in the box.

It is not probable that, at the time, the parties should mistake the case.

At figure 5,—

When it is said in the bill of exceptions that the Court, having refused the instructions asked by the defendants, instructed the jury, "That the payer (holder of a blank note) is authorized by law to fill up said blanks with any day of the month, unless there be an agreement at the time of delivering said note in relation to the filling up of said blanks, in which event the payer, or holder, has no right to fill the blank date contrary to, and different from, the agreement." The instruction, here stated to have been given, was not given; and its insertion is a mistake.

At figure 6.

The instructions, offered to be given by the Court, were offered in connection with the instructions asked for by the plaintiffs, and not in connection with the instructions asked for by the defendants, as they now stand in the bill of exceptions.

A 7.

The bill of exceptions is erroneous in stating, that no exceptions were taken to any opinion of the Court in relation to the admission of evidence. It is believed that the rejection of the writing signed by Brungard, was excepted to.

The Exhibit A referred to, is not attached to the bill of exceptions.

The defendants would respectfully ask, that the bill of exceptions be examined, and the facts investigated, and that the corrections may be made according to the truth of the case, as it transpired before the Court.

The defendants further state, that this application is grounded on the fact, that the making of the bill of exceptions and the statement of the facts of the trial was submitted to the Court by both parties; and that the defendants, on the morning after the trial, presented their bill of exceptions for the signature of the Judge, who laid it over and declined acting in the matter at that time; and that the Court, being much engaged, laid over the business for several days, on its own motion, and, after repeated calls from the defendants to complete the bill of exceptions, the affidavits of nine of the jury are submitted in support of the motion.

WILLIAM CUMMINS.

The undersigned, being solemnly sworn, says, that, to the best of his recollection, knowledge, and belief, the facts stated and set forth in the foregoing motion are true.

WILLIAM CUMMINS.

Sworn to and subscribed before me, October 1st, 1842.

WILLIAM FIELD,
Clerk.

By A. H. RUTHERFORD,
Deputy Clerk.

BRENIMAN, Assignee, &c.,
v.
INGLISH & JOHNSON, and others.

Motion for new trial.

The said defendants, on the grounds above stated, and inasmuch as the facts of said trial, as they are stated on the record, are doubtful and uncertain, and may be incorrect, and move the Court that a new trial be awarded, that the facts of the case can be stated with certainty, and the rights of all parties secured.

W. & E. CUMMINS.

Filed, October 1st, 1842.

WILLIAM FIELD,
Clerk.

By A. H. RUTHERFORD,
Deputy Clerk.

October 18th, 1842, the following entry was had:

GEORGE BRENIMAN, Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH, and others, Defendants.

This day came the said defendants, by Cummins, their attorney, and filed their further motion and affidavit to set aside the judgment and proceedings in this case.

Motion.

Circuit Court of United States, March Term, 1842.

GEORGE BRENIMAN, Assignee, &c.,
v.
WILLIAM K. INGLISH and others.

On this day appears said defendants, by W. and E. Cummins, and move the Court to set aside the verdict and judgment in this case, on the grounds of irregularity, stated and shown in the writing previously filed to amend and correct the record in this cause, to wit: That the bill of exceptions contains mistakes; that the bill of exceptions was not completed and signed immediately after the trial transpired, being delayed by the Court on account of press of business, until the attorney for defendants, who had charge of the completion

tion, if this evidence had previously rejected? It is impossible to suppose this, and these instructions were written down at the time, and whilst the jury was in the box.

It is not probable that, at the time, the parties should mistake the case.

At figure 5,—

When it is said in the bill of exceptions that the Court, having refused the instructions asked by the defendants, instructed the jury, "That the payer (holder of a blank note) is authorized by law to fill up said blanks with any day of the month, unless there be an agreement at the time of delivering said note in relation to the filling up of said blanks, in which event the payer, or holder, has no right to fill the blank date contrary to, and different from, the agreement." The instruction, here stated to have been given, was not given; and its insertion is a mistake.

At figure 6.

The instructions, offered to be given by the Court, were offered in connection with the instructions asked for by the plaintiffs, and not in connection with the instructions asked for by the defendants, as they now stand in the bill of exceptions.

A 7.

The bill of exceptions is erroneous in stating, that no exceptions were taken to any opinion of the Court in relation to the admission of evidence. It is believed that the rejection of the writing signed by Brungard, was excepted to.

The Exhibit A referred to, is not attached to the bill of exceptions.

The defendants would respectfully ask, that the bill of exceptions be examined, and the facts investigated, and that the corrections may be made according to the truth of the case, as it transpired before the Court.

The defendants further state, that this application is grounded on the fact, that the making of the bill of exceptions and the statement of the facts of the trial was submitted to the Court by both parties; and that the defendants, on the morning after the trial, presented their bill of exceptions for the signature of the Judge, who laid it over and declined acting in the matter at that time; and that the Court, being much engaged, laid over the business for several days, on its own motion, and, after repeated calls from the defendants to complete the bill of exceptions, the affidavits of nine of the jury are submitted in support of the motion.

WILLIAM CUMMINS.

The undersigned, being solemnly sworn, says, that, to the best of his recollection, knowledge, and belief, the facts stated and set forth in the foregoing motion are true.

WILLIAM CUMMINS.

Sworn to and subscribed before me, October 1st, 1842.

WILLIAM FIELD, Clerk.

By A. H. RUTHERFORD, Deputy Clerk.

BRENIMAN, Assignee, &c.,
v.
INGLISH & JOHNSON, and others.

Motion for new trial.

The said defendants, on the grounds above stated, and inasmuch as the facts of said trial, as they are stated on the record, are doubtful and uncertain, and may be incorrect, and move the Court that a new trial be awarded, that the facts of the case can be stated with certainty, and the rights of all parties secured.

W. & E. CUMMINS.

Filed, October 1st, 1842.

WILLIAM FIELD, Clerk.

By A. H. RUTHERFORD, Deputy Clerk.

October 18th, 1842, the following entry was had:

GEORGE BRENIMAN, Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH, and others, Defendants.

This day came the said defendants, by Cummins, their attorney, and filed their further motion and affidavit to set aside the judgment and proceedings in this case.

Motion.

Circuit Court of United States, March Term, 1842.

GEORGE BRENIMAN, Assignee, &c.,
v.
WILLIAM K. INGLISH and others.

On this day appears said defendants, by W. and E. Cummins, and move the Court to set aside the verdict and judgment in this case, on the grounds of irregularity, stated and shown in the writing previously filed to amend and correct the record in this cause, to wit: That the bill of exceptions contains mistakes; that the bill of exceptions was not completed and signed immediately after the trial transpired, being delayed by the Court on account of press of business, until the attorney for defendants, who had charge of the completion

of the bill of exceptions, was obliged to leave the Court on business, and, on the further grounds, that the jury were misdirected as to the law by the Court on the trial of the cause.

W. & E. CUMMINS.

William Cummins, one of said defendants, being solemnly sworn, on oath, says, that, to the best of his recollection, knowledge, and belief, the facts stated above are true.

WILLIAM CUMMINS.

Sworn to, in open Court, October 18th, 1842.

WILLIAM FIELD, Clerk.

GEORGE BRENIMAN, Assignee of George Brungard, Plaintiff,
v.
WILLIAM K. INGLISH, THOMAS H. JOHNSON, LORENZO GIBSON, and WILLIAM CUMMINS, Defendants.

This day came the parties by their attorneys, and the motions of the said defendants, for the correction of the record in this case, and to grant a new trial, were submitted to the Court, and taken under advisement.

GEORGE C. BRENIMAN, Plaintiff,
v.
WILLIAM K. INGLISH and THOMAS H. JOHNSON, late partners, &c., under the firm of INGLISH & JOHNSON, WILLIAM CUMMINS, and LORENZO GIBSON, Defendants.

This day came the said parties by their attorneys; and on motion of the said defendants, it is ordered by the Court, that the motion of the defendants, heretofore filed, for a new trial in this case, be and the same is hereby continued until the next term of this Court.

April 17th, 1843, the following proceedings were had:

GEORGE C. BRENIMAN, Assignee, &c., Plaintiff,
v.
WILLIAM K. INGLISH and THOMAS H. JOHNSON, partners, &c., under the name, style, and firm of "INGLISH & JOHNSON," and LORENZO GIBSON, and WILLIAM CUMMINGS, Defendants.
Assumpsit.

This day came the parties by their attorneys, and the said defendants, by their attorneys, file their motion to quash and set aside the execution heretofore issued in this case; which motion is overruled, and the defendants' motion, heretofore made, to amend the bill of exceptions, is overruled, and the said plaintiff files his motion to strike out defendants' motion, heretofore made, to set aside verdict,

and for a new trial, is sustained, and the same stricken out accordingly.

Defendants' motion to quash Execution.

GEORGE C. BRENIMAN, Assignee of GEORGE BRUNGARD,
Plaintiff,
v.
INGLISH & JOHNSON, GIBSON & CUMMINS.

Said Inglish & Johnson move the Court here to quash the said execution in this case, on the grounds, to wit:

1st. That said execution was issued during the pendency of a motion to arrest the judgment, and for a new trial, and before the same was determined by the Court, and therefore before final judgment therein.

2d. That although two executions have issued herein, they both purport to be original executions, and neither is, or purports to be, an alias; and that the executions do not show any remittitur on their face, nor is any indorsement thereof made by plaintiff or his attorney.

BLACKBURN & E. CUMMINS.

In the United States Circuit Court, at March Term, 1843.

Motion to strike out Paper.

BRENIMAN, Assignee,
v.
INGLISH, JOHNSON, et al.

And the said plaintiff moves the Court to strike out the paper purporting to be a motion to set aside the verdict and judgment in this case, and also to amend the bill of exceptions in this case, heretofore allowed to be filed by the said defendants.

ASHLEY & WATKINS,
Attorney for Plaintiff.

Filed 17th April, 1843.

WM. FIELD,
Clerk.
By A. H. RUTHERFORD,
Deputy Clerk.

Execution.

United States of America, District of Arkansas, *sct.*

[L. S.] The President of the United States to the Marshal of the Arkansas District, greeting: Whereas, George C. Breniman, Assignee of George Brungard, on the 19th day of April, A. D. 1842, in our Circuit Court of the United States for the District of Arkansas, hath recovered against William K. Inglish and

Thomas H. Johnson, late partners in trade, under the name, style, and firm of "Inglish & Johnson," Lorenzo Gibson, and William Cummins, the sum seven thousand six hundred dollars and twenty-four cents damages (say $7600 24), which were adjudged to him for his damages, together with the sum of eighty-seven dollars and three cents, for costs sustained in the suit.

You are therefore commanded, that of the goods and chattels, lands and tenements, of the said William K. Inglish, Thomas H. Johnson, Lorenzo Gibson, and William Cummins, you cause to be made the damages aforesaid, together with the costs aforesaid, so that you have the same before the Clerk of our said Court, at his office, in the City of Little Rock, on the second day of March Term next, to be paid over to said plaintiff; and then and there certify how you have executed this writ.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Court to be hereunto affixed, this 7th day of February, A. D. 1843, and the sixty-seventh year of American Independence.

Attest, WM. FIELD,
Clerk.
By A. H. RUTHERFORD,
Deputy Clerk.

Remittitur.

This execution is entitled to a credit of eight hundred and eighty-one dollars and forty-eight cents, being the amount that plaintiff entered his remittitur for on said judgment of 19th April, 1842.

Attest, WM. FIELD,
Clerk.
By A. H. RUTHERFORD,
Deputy Clerk.

Isaac N. Barnett, Esq., of Columbia, in Chicot County, will direct and control this execution, and the Marshal of Arkansas District will call upon him for instructions.

ASHLEY & WATKINS,
8th February, '43. Attorneys for Plaintiff.

Came to hand ½ past 11 o'clock, A. M., February 13th, 1843.

THOMAS W. NEWTON,
Marshal.
By R. T. REDMAN,
Deputy Marshal.

Return.

This execution is levied upon the following lands, as the property of William Cummins, which remain in my hands unsold, for want of time to sell the same.

South fractional half of northwest fractional quarter of fractional section 10.

Northwest fractional quarter of northwest fractional quarter of fractional section 10.

Northeast fractional part (east of Grand Lake) of northeast fractional quarter of section 9.

Southeast fractional quarter (east of Grand Lake) of fractional section 4.

Southwest quarter of fractional section 3.

All in Township 19 south, of Range one west, 5th principal meridian.

Also the undivided half or moiety of the following lands.

Southwest quarter of fractional section twenty-two.

Northeast fractional quarter of fractional section twenty-seven.

West half and southeast quarter of section twenty-one.

East half and northwest quarter of section twenty-eight.

Southwest fractional quarter of fractional section twenty-three.

North half of section thirty.

East half and southwest quarter of section nineteen.

East half of northwest quarter of section nineteen.

East half of section eighteen.

East half of southwest quarter of section eighteen.

East half of section seven.

Southeast and west half of northeast quarter section six.

East half of northwest quarter section six.

All these last above in Township nineteen south, of Range one west, 5th principal meridian.

Also, sell the following lands:

West half of southeast quarter of fractional section thirty-four.

Southeast quarter of northeast quarter of fractional section thirty-four.

North fractional half of northeast fractional quarter of fractional section thirty-four.

Southwest quarter of northwest quarter of fractional section thirty-five.

All the last in Township eighteen (18) north, of Range one west, 5th principal meridian.

THOS. W. NEWTON,
Marshal.
By R. T. REDMAN,
Deputy Marshal.

Mileage, . . .	$15 00
Service by return, .	3 50
	$18 50

Venditioni Exponas.

United States of America, District of Arkansas, *sct.*

The President of the United States to the Marshal of the Arkansas District, greeting:

Whereas, George C. Breniman, assignee of George Brungard, on the 19th day of April, A. D. 1842, in our Circuit Court of the United States for the District of Arkansas, hath recovered against William K. Inglish and Thomas H. Johnson, late partners in trade under the name, style, and firm of Inglish & Johnson, Lorenzo Gibson, and William Cummins, the sum of seven thousand six hundred dollars and twenty-four cents (say $7600\frac{24}{100}$) damages, which were adjudged to him for his damages, together with the sum of one hundred and nine dollars and fifty-three cents, for costs sustained in this suit; and whereas the said George C. Breniman, assignee as aforesaid, on the 7th day of February, A. D. 1843, has sued out of the office of the Clerk of the Circuit Court of the United States for the District aforesaid an alias writ of execution for the recovery of the damages and costs aforesaid; and whereas also the said execution was levied on the following described real estate, to wit:

South fractional half of northwest fractional quarter of fractional section 10.

Northwest fractional quarter of northwest fractional quarter of fractional section 10.

North fractional part (east of Grand Lake) of northeast fractional quarter section 9.

Southeast fractional quarter (east of Grand Lake) of fractional section 4.

Southwest quarter of fractional section 3.

All in Township 19 south, of Range one west, 5th principal meridian.

Also the undivided half or moiety of the following lands:

Southwest quarter of fractional section (22) twenty-two.

Northeast fractional quarter of fractional section (27) twenty-seven.

West half and southeast quarter of section (21) twenty-one.

East half and northeast quarter of section (28) twenty-eight.

Southwest fractional quarter of fractional section (23) twenty-three.

North half of section (30) thirty.

East half and southwest quarter of section (19) nineteen.

East half of the northwest quarter of section (19) nineteen.

East half of section (18) eighteen.

East half of southwest quarter of section (18) eighteen.

East half of section (7) seven.

Southeast and west half of northeast quarter section (6) six.

East half of northwest quarter section (6) six.

All of the last above mentioned lands are in Township (19) nineteen south, of Range one west, of the 5th principal meridian.

Also, the following lands:

West half of southeast quarter of fractional section (34) thirty-four.

Southeast quarter of northeast quarter of fractional section (34) thirty-four.

North fractional half of northeast fractional quarter of fractional section (34) thirty-four.

Southwest quarter of northwest quarter of fractional section (35) thirty-five.

All the last-mentioned lands in Township eighteen (18) south, of Range one west, 5th principal meridian, as the property of William Cummins; which property remained in my hands unsold, for want of time to advertise and sell according to law.

Therefore you are hereby commanded, that you expose for sale and do sell the property above specified and levied upon as aforesaid, and that you cause to be made the damages and costs aforesaid, so that you have the same before the Clerk of our said Court, at his office in the City of Little Rock, on the first Monday of January next, to be paid over to said plaintiffs, and then and there certify how you have executed this writ.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of the said Circuit Court to be hereto affixed, this 21st day of August, A. D. 1843, and in the 68th year of American Independence.

[L. S.]

Attest, WM. FIELD, Clerk.

By A. H. RUTHERFORD, Deputy Clerk.

Remittitur.

This venditioni exponas is entitled to a credit of eight hundred and eighty-one dollars and forty-eight cents, being the amount that plaintiff entered remittitur for on said judgment on the 19th April, 1842.

Attest, WM. FIELD, Clerk.

By A. H. RUTHERFORD, Deputy Clerk.

Received, Nov. 28th, 1843, of Henry M. Rector, United States Marshal, by the hands of N. T. Gains, Deputy, thirty-three $\frac{77}{100}$ dollars, in full, of my fees indorsed on the within writ.

THOS. W. NEWTON, Late United States Marshal.

By GEO. A. WORTHEN, Late Deputy Marshal.

Received, on this execution, by Col. A. H. Rutherford, twenty dollars, and by myself the residue of my fees in this case.

WM. FIELD, Clerk.

Whereas, George C. Breniman, assignee of George Brungard, on the 19th day of April, A. D. 1842, in our Circuit Court of the United States for the District of Arkansas, hath recovered against William K. Inglish and Thomas H. Johnson, late partners in trade under the name, style, and firm of Inglish & Johnson, Lorenzo Gibson, and William Cummins, the sum of seven thousand six hundred dollars and twenty-four cents (say 7600\frac{24}{100}$) damages, which were adjudged to him for his damages, together with the sum of one hundred and nine dollars and fifty-three cents, for costs sustained in this suit; and whereas the said George C. Breniman, assignee as aforesaid, on the 7th day of February, A. D. 1843, has sued out of the office of the Clerk of the Circuit Court of the United States for the District aforesaid an alias writ of execution for the recovery of the damages and costs aforesaid; and whereas also the said execution was levied on the following described real estate, to wit:

South fractional half of northwest fractional quarter of fractional section 10.

Northwest fractional quarter of northwest fractional quarter of fractional section 10.

North fractional part (east of Grand Lake) of northeast fractional quarter section 9.

Southeast fractional quarter (east of Grand Lake) of fractional section 4.

Southwest quarter of fractional section 3.

All in Township 19 south, of Range one west, 5th principal meridian.

Also the undivided half or moiety of the following lands:

Southwest quarter of fractional section (22) twenty-two.

Northeast fractional quarter of fractional section (27) twenty-seven.

West half and southeast quarter of section (21) twenty-one.

East half and northeast quarter of section (28) twenty-eight.

Southwest fractional quarter of fractional section (23) twenty-three.

North half of section (30) thirty.

East half and southwest quarter of section (19) nineteen.

East half of the northwest quarter of section (19) nineteen.

East half of section (18) eighteen.

East half of southwest quarter of section (18) eighteen.

East half of section (7) seven.

Southeast and west half of northeast quarter section (6) six.

East half of northwest quarter section (6) six.

All of the last above mentioned lands are in Township (19) nineteen south, of Range one west, of the 5th principal meridian.

Also, the following lands:

West half of southeast quarter of fractional section (34) thirty-four.

Southeast quarter of northeast quarter of fractional section (34) thirty-four.

North fractional half of northeast fractional quarter of fractional section (34) thirty-four.

Southwest quarter of northwest quarter of fractional section (35) thirty-five.

All the last-mentioned lands in Township eighteen (18) south, of Range one west, 5th principal meridian, as the property of William Cummins; which property remained in my hands unsold, for want of time to advertise and sell according to law.

Therefore you are hereby commanded, that you expose for sale and do sell the property above specified and levied upon as aforesaid, and that you cause to be made the damages and costs aforesaid, so that you have the same before the Clerk of our said Court, at his office in the City of Little Rock, on the first Monday of January next, to be paid over to said plaintiffs, and then and there certify how you have executed this writ.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of the said Circuit Court to be hereto affixed, this 21st day of August, A. D. 1843, and in the 68th year of American Independence.

[L. S.]

Attest, WM. FIELD, Clerk.

By A. H. RUTHERFORD, Deputy Clerk.

Remittitur.

This venditioni exponas is entitled to a credit of eight hundred and eighty-one dollars and forty-eight cents, being the amount that plaintiff entered remittitur for on said judgment on the 19th April, 1842.

Attest, WM. FIELD, Clerk.

By A. H. RUTHERFORD, Deputy Clerk.

Received, Nov. 28th, 1843, of Henry M. Rector, United States Marshal, by the hands of N. T. Gains, Deputy, thirty-three $\frac{77}{100}$ dollars, in full, of my fees indorsed on the within writ.

THOS. W. NEWTON, Late United States Marshal.

By GEO. A. WORTHEN, Late Deputy Marshal.

Received, on this execution, by Col. A. H. Rutherford, twenty dollars, and by myself the residue of my fees in this case.

WM. FIELD, Clerk.

Came to hand, August 21st, 1843.

H. M. RECTOR,
United States Marshal.
By N. T. GAINES,
Deputy Clerk.

Return.

I hereby certify that I did, on the 31st of August, A. D. 1843, duly advertise for sale, at public auction, as the law requires, the lands mentioned in the within writ, which sale was fixed to take place at the court-house door, in the town of Columbia, *Chicot* County, in said district, on Monday the twentieth day of November, 1843, and that on said day I did expose for sale at public auction, as the within writ commands, the said lands within mentioned. Whereupon, Isaac N. Barnett having bid for the following described lands, to wit: the south fractional half of northwest fractional quarter of Sect. 10; the northwest fractional quarter of northwest fractional quarter Sect. 10; the northeast fractional part (east Grand Lake) of northeast fractional quarter of Sect. 9; the southeast fractional quarter (east of Grand Lake) of fractional Sect. 4, and the southwest quarter of fractional Section 3; all in township 19 south, of range one west, 5th principal meridian, the sum of twenty dollars, which being the last and highest bid for said above-mentioned lands, I did then and there sell and strike off to said Barnett the said lands. And said Isaac N. Barnett having also bid for the following lands, to wit: the undivided half or moiety of the southwest quarter of fractional section twenty-two; the northeast fractional quarter of fractional section twenty-seven; the west half and southeast quarter of section twenty-one; the east half and northwest quarter of section twenty-eight; the southwest fractional quarter of fractional section twenty-three; the north half of section thirty; the east half and southwest quarter of section nineteen; the east half of the northwest quarter of section nineteen; the east half of section eighteen; the east half of the southwest quarter of section eighteen; the east half of section seven; the southeast and west half of northeast quarter of section six; and the east half of the northwest quarter of section six; all of the last-mentioned lands are in township nineteen south, of range one west, of the fifth principal meridian; the sum of one hundred dollars. Which bid of the said Barnett being the last and highest that was offered, I did also then and there sell and strike off to said Barnett the last above-described lands. And the said Barnett having also bid for the following lands, to wit: the west half of the southeast quarter of fractional section (34) thirty-four; the southeast quarter of the northeast quarter of fractional section (34) thirty-four; the north fractional half of northeast fractional quarter of fractional section (34) thirty-four; the southwest quarter of the northwest quarter of fractional section (35) thirty-five; all the (last above-mentioned) in township eighteen (18) south, of range one west, of the fifth principal meri-

dian, the sum of thirty dollars ($30). Which bid of the said Isaac N. Barnett, being the last and highest that was offered, I did also then and there sell and strike off to said Barnett the last above-mentioned lands.

Which said sums of twenty, one hundred, and thirty dollars, in all one hundred and fifty dollars, I have now before the Court within written, at the day and place within contained, to render to the within-named plaintiff, in part satisfaction of his damages and costs within specified.

H. M. RECTOR,
United States Marshal.
By N. T. GAINES,
Deputy Marshal.

Fee Bill.

Service, ...	$2 00
500 Cir. Mi. @ 5 per cent., .	28 00
Commissions on $7357 @ 1 per ct.,	73 57
Advtg. 75; Return, $1, . .	1 75
	$105 32

Revivor.

April 20th, 1844.

GEORGE C. BRENIMAN, as Assignee of GEORGE BRUNGARD, Plaintiff,
v.
WILLIAM K. INGLISH and THOMAS H. JOHNSON, late partners in trade, under the name, style, and firm of INGLISH & JOHNSON, LORENZO GIBSON, and EBENEZER CUMMINS, as Administrator of WILLIAM CUMMINS, deceased, Defendants.

On Scire Facias to revive Judgment.

This day comes the said plaintiff, by Ashby and Watkins his attorneys, and the said defendants, though duly served with the scire facias in this case, and solemnly called, came not, but made default, and it appears to the satisfaction of the Court, that said George C. Breniman, as assignee of George Brungard, heretofore, to wit, on the 19th day of April, A. D. 1842, by the consideration and judgment of this Court, recovered against William K. Inglish and Thos. H. Johnson, late partners, &c., under the name, style, and firm of Inglish & Johnson, and Lorenzo Gibson, and William Cummins, the sum of seven thousand six hundred dollars and twenty-four cents, which were adjudged to him for his damages, and also the sum of two hundred and thirteen dollars and two cents, for costs sustained in the suit, as appears of record, and that said judgment remains wholly unpaid.

Whereupon it is suggested and proved to the Court here, by said plaintiff, that since the rendition of said judgment, said William

Cummins has departed this life intestate; and that administration of all and singular the goods and chattels, rights and credits, which were of the said William, at the time of his death, has been in due form of law granted unto said Ebenezer Cummins, by the Hon. Probate Court of Pulaski County, in the State of Arkansas; and the said Thomas H. Johnson appears by Trapnall, his attorney; and thereupon it is admitted by said plaintiff, that said Thomas H. Johnson has obtained a certificate of final discharge as a bankrupt, therefore it is considered by the Court, that said Thomas H. go hence hereof without day; and on motion of said plaintiff, it is considered and adjudged that said judgment be revived against William K. Inglish, Lorenzo Gibson, and Ebenezer Cummins, as administrator as aforesaid, and the lien thereof continued, and that said George C. Breniman, as assignee of George Brungard, have execution against said William K. Inglish, Lorenzo Gibson, and Ebenezer Cummins, as administrator of all and singular the goods and chattels, rights and credits of said William Cummins, deceased, as well for the damages and costs aforesaid, according to the force, form, and effect of the recovery aforesaid, as for all his costs expended in and about this scire facias, by the Court now hereby adjudged to him, &c.

Writ of sci. fa.

United States of America, District of Arkansas, *sct.*

The President of the United States to the Marshal of the Arkansas District, greeting:

Whereas, George C. Brenneman, assignee of George Brungard, on the 19th day of April, A. D. 1842, in our Circuit Court of the United States, for the Arkansas District, by the consideration and judgment of the said Court, recovered against William K. Inglish, and Thomas H. Johnson, late partners, &c., under the name, style, and firm of Inglish & Johnson, Lorenzo Gibson, and William Cummins, the sum of seven thousand six hundred dollars and twenty-four cents, which were adjudged to him for his damages, and also the sum of two hundred and thirteen dollars and two cents, for costs sustained in the suit as plainly appears of record.

And whereas, the said William Cummins is since deceased, to wit: at the County of Pulaski, and District aforesaid, as by the suggestion of the said Breneman hath been stated; and now, on behalf of the said George C. Breneman, assignee as aforesaid, it hath been understood in the said court, that although the judgment thereof is given, yet execution for the damages and costs aforesaid still remains to be made for him.

Wherefore, the said George C. Breneman, assignee, &c., hath besought that a proper remedy be granted him in this behalf.

You are therefore commanded, that by good and lawful men of your

bailiwick, you give notice to the said William K. Inglish and Thos. H. Johnson, late partners, &c., Lorenzo Gibson, and Ebenezer Cummins as administrator of all and singular the goods and chattels, rights and credits, which were of the said William Cummins, at the time of his death, who died intestate, as it is said, that they be and appear before the Judge of our said Circuit Court, at the court-house in the City of Little Rock, on the first day of our March term next, to show cause, if any they have, or can, why the said judgment should not be revived against them, and the lien continued, and why the said George C. Brenneman, assignee, &c., ought not to have his execution against them for the damages and costs aforesaid, according to the force, form, and effect of the recovery aforesaid, if they, the said William K. Inglish and Thomas H. Johnson, late partners, &c., Lorenzo Gibson, and Ebenezer Cummins as administrator as aforesaid of William Cummins, deceased, shall think fit; and further to do and receive what the said Court shall then and there consider concerning them in this behalf; and have there then the names of those by whom you shall give them notice, and this writ.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said [L. S.] Circuit Court, to be hereto affixed, this 20th day of January, A. D. 1844, and in the 68th year of American Independence.

Attest, WM. FIELD,
Clerk.

By A. H. RUTHERFORD,
Deputy Clerk.

Came to hand this 31st day of January, A. D. 1844.

H. M. RECTOR,
U. S. Marshal.

Return.

Executed the within writ on the within-named Ebenezer Cummins, by reading the same to him, at Little Rock, Arkansas, this 8th day of February, 1844.

H. M. RECTOR,
U. S. Marshal.

Executed the within writ of scire facias on Lorenzo Gibson, the 10th day of February, A. D. 1844, by reading the same to him in Hot Spring County, District of Arkansas.

H. M. RECTOR,
U. S. Marshal.

By A. O. GREER,
Deputy Marshal.

Fee Bill.

90 cir. mi. @ 5, . .	$4 50
Service on Gibson, . .	2 00
Do. on Inglish, . .	2 00
Do. on Cummins, . .	2 00
	$10 50

Executed the within writ of scire facias on William K. Inglish, the 5th day of March, A. D. 1844, by reading the same to him, in Pulaski County, at Little Rock City, District of Arkansas.

H. M. RECTOR,
U. S. Marshal.
By A. O. GREER,
Deputy Marshal.

District of Arkansas, *sct.*

I, William Field, Clerk of the Circuit Court of the United States, within and for the District of Arkansas, do hereby certify that the above and foregoing thirty-three and one-half pages (33½ half sheets) contain a full and complete transcript of the record and proceedings in the cause therein mentioned.

In testimony whereof, I have hereunto set my hand as Clerk, and affixed the seal of said Circuit Court, at [L. S.] office, in the City of Little Rock, this 27th day of August, A. D. 1847, and in the 72d year of American Independence.

WM. FIELD,
Clerk.
By A. H. RUTHERFORD,
Deputy Clerk.

(Indorsement on back): Filed Nov. 13, 1847.
CALVIN ASHBROOK,
Clerk.
By JO. B. STEDMAN,
Deputy Clerk.

And afterwards, to wit, at the November Term, A. D. 1847, of said Circuit Court, on the 10th day of November, A. D. 1847, the following entry was made of record in this cause, to wit:

GEORGE C. BRENIMAN, Complainant,
v.
EBENEZER CUMMINS, as Administrator of WILLIAM CUMMINS, deceased, MARY CUMMINS, an infant heir of said WILLIAM FREDERIC NOTRIBE, TERRENCE FARRELLY, and WILLIAM. W. WOODFOLK, Defendants.

And now on this day come the said complainant, and by his Solici-

tor, and it appearing to the satisfaction of the Court that Mary Cummins, one of the defendants in this cause, who has been legally served with process more than thirty days preceding the commencement of this term of this Court, is a minor under the age of twenty-one years, Albert Pike, Esquire, was appointed guardian *ad litem* for said Mary Cummins, who, as such guardian, by consent of said complainant, filed here his answer, in short, upon the record for said minor, denying all the allegations and charges in said bill of complaint contained, to which the said complainant, by consent of said guardian, filed in short here, on the record, his general replication to said answer; and by consent of said complainant and said guardian *ad litem*, and with the approval of this Court, this cause, as to said minor, is set down for hearing at this term of the Court.

And now, at this day, to wit, on the 13th day of November, A. D. 1847, it being the 6th day of the November Term, A. D. 1847, of said Circuit Court, the following proceedings were had and decree rendered in this cause, to wit:

GEORGE C. BRENIMAN,
v.
EBENEZER CUMMINS, as Administrator of the estate of WILLIAM, deceased, and MARY CUMMINS, infant daughter and sole heir of said WILLIAM, Defendants.

And now, on this day came the said complainant, by his solicitor, the said defendant, Ebenezer Cummins, who has been duly and legally served with process more than thirty days preceding this Term of this Court, having wholly failed to appear and plead, answer, or demur to said bill of complaint, and therefore, on motion of said complainant, is ordered, adjudged, and decreed, that the said bill, and all and singular the allegations and charges therein contained, be and the same is hereby taken for true and confessed, as against said defendants, Ebenezer; and the said complainant, by his solicitor, filed here a transcript of the Record of the Circuit Court of the United States, for the District of Arkansas, of a certain cause therein pending, wherein said complainant was plaintiff, and William K. Inglish and Thomas H. Johnson, who were partners under the firm of Inglish & Johnson, and said William Cummins and Lorenzo Gibson were defendants; and thereupon came the said complainant by his solicitor, and the said Mary Cummins by her guardian ad litem, Albert Pike, Esquire; and this cause came on for final hearing, on the bill of complaints and the exhibits therewith filed, the answer of said Mary Cummins and the replication thereto, and the evidence adduced in this cause; and the same being heard and considered by the Court, and the Court being fully advised what decree to make, doth find, adjudge, and determine, and such is the opinion of the Court, that said complainant did, as as-

signee of said Brungard, on the 19th day of April, A. D. 1842, by the consideration and judgment of the said Circuit Court of the United States for the District of Arkansas, recover against said Inglish and Johnson, said Gibson, and said William Cummins, in his lifetime, the sum of seven thousand six hundred dollars and twenty-four cents, for his damages and also his costs in that behalf expended; that a fieri facias was sued and prosecuted out of said Court, by said plaintiff, on said judgment, on the 7th day of February, A. D. 1843; that said fieri facias was levied by the marshal of the U. S. for said district, before the return day thereof, on the following tracts of land, as the property of said William Cummins, to wit: the south fractional half of the northwest fractional quarter of section ten (10), the northwest fractional quarter of northwest fractional quarter of section ten (10), the northeast fractional part (east of Grand Lake) of northeast fractional quarter of section nine (9), the southeast fractional quarter (east of Grand Lake) of fractional section four (4), the southwest quarter of fractional section three (3), all in Township nineteen south, of Range one west, of fifth principal meridian, and upon the following lands, to wit: the west half of the southeast quarter of section thirty-four (34), the southeast quarter of the northeast quarter of section thirty-four (34), north fractional half of northeast fractional quarter of section thirty-four (34), southwest quarter of northwest quarter of section thirty-five (35), all in Township eighteen south, of Range one west, of fifth principal meridian; as well as upon other lands of the said William Cummins, deceased; that said lands were not sold by said marshal, under said fi. fa.; nor was any part of said damages, interest, or costs, made. That said William Cummins departed this life some time in the month of April, A. D. 1843, leaving the said Mary his only child and sole heir, who is an infant under the age of twenty-one years. That administration of the estate of said William has been in due form of law granted to said Ebenezer, who has taken the burden of the same himself. That said judgment, on the 20th day of April, A. D. 1844, was duly revived in said Circuit Court of the United States for said district against said Ebenezer as administrator as aforesaid. That said damages and costs are wholly unpaid, except the sum of eight hundred dollars, by said plaintiff in said suit remitted, on the 4th day of May, 1842, and the sum of one hundred and fifty dollars, made by said marshal in said writ of ven. ex. in said bill set forth, on the 20th day of November, A. D. 1843. That said judgment created in favor of said complainant a general lien on said lands, and said levy by said marshal of said fi. fa. as aforesaid created a specific lien on said lands, neither of which has been in any manner executed, and both of which remain in full force, and not in any wise impaired or effected. That said sale by said marshal of said land, under said ven. ex., was wholly void and of no effect, and that said complainant is entitled to have said liens enforced, and said damages and costs paid. Therefore, it is ordered, adjudged, and

declared, by the Court here, that unless the said defendants, or one of them, do, by the first day of March next, pay to said complainant the said damages and costs so recovered by said complainant as aforesaid, less the said sums herein found to be paid thereon, and also the interest due and accrued thereon, according to the form and effect of said judgment, that then and in default thereof the said lands be sold at public auction to the highest bidder for cash in hand, on the fourth day of our next term of this Court, between the hours for judicial sales, at the court-house door of said County of Chicot, by Johnson Chapman, Esquire, who is now here appointed Commissioner to make such sale, and that said Commissioner give due notice of such sale by one advertisement thereof, put up at the said court-house, at least thirty days before such sale. That out of the proceeds of such sale said commissioner first pay the expenses of said sale, then the costs of this suit, and then the said damages, costs, and interest on said judgment, and bring the balance (if any there be) into Court here with his report; and that unless said Ebenezer shall be and appear here by the third day of our next term and show good cause for not before appearing, this decree shall be all respects final against him.

GEORGE C. BRENIMAN, Complainant,
v.
EBENEZER CUMMINS, as administrator of WILLIAM CUMMINS, deceased, MARY CUMMINS, infant daughter and sole heir of WILLIAM CUMMINS, FREDERIC NOTRIBE, TERRENCE FARRELLY, and WILLIAM W. WOODFOLK, Defendants.

And now, on this day came the said complainant, by his solicitor Barnett; and the said defendants, Ebenezer Cummins, Frederic Notribe, and Terrence Farrelly, although duly served with process in this cause more than thirty days preceding the commencement of this term of our Court, having wholly failed to appear and plead, answer or demurr to said bill of complaint, therefore on motion of said complainant, by his solicitor, it is ordered, adjudged, and decreed that the said bill, and all and singular the allegations and charges therein contained, be and the same is hereby taken as true and confessed against them, the said Ebenezer, Notrebe, and Farrelly; and the said William W. Woodfolk, by Albert Pike, Esq., his solicitor, appeared here and declined to plead, answer, or demurr to said bill, but confessed that the same and all its allegations and charges are true; and therefore came the said complainant by his solicitor, and the said Mary Cummins by her guardian ad litem, Albert Pike, Esquire, and this cause came on for final hearing on the said bill and exhibits, and the answer of said Mary Cummins and replication thereto; and the same being heard and considered by the Court, and the Court now having fully considered the same, and heard the testimony adduced,

and being fully advised what decree to render, the Court here is of opinion, and doth so find, adjudge, and determine, that said complainant, as assignee of George Brungard, on the 19th day of April, A. D. 1842, by the consideration and judgment of the Circuit Court of the United States for the District of Arkansas, recovered against said William K. Inglish and Thomas H. Johnson, who were partners under the firm of Inglish & Johnson, and Lorenzo Gibson and William Cummins, the sum of seven thousand six hundred dollars and twenty-four cents, for their damages and also all his costs, &c., in that suit expended; that said plaintiff prosecuted out of said Court, in said judgment, a writ of fieri facias, on the 7th day of February, 1843, directed to the Marshal of the United States for said District of Arkansas; that said marshal, under and by virtue and in execution and before the return day thereof said fi. fa., among other lands on the following lands as the property of said William Cummins, to wit, the undivided half or moiety of the following described tracts of land, to wit: the northeast fractional quarter of fractional section twenty-seven (27), the southwest quarter of fractional twenty-two (22), the west half and southeast quarter of section twenty-one (21), the east half and northwest quarter of section twenty-eight (28), and the southwest fractional quarter of fractional section twenty-three (23), all in Township nineteen south, of Range one west, of 5th principal meridian, and situate in the said County of Chicot. The said lands were not sold under said fieri facias, nor said damages and costs or any part of either made; that said William Cummins, departed this life some time in the month of April, A. D. 1843; that said Ebenezer is the administrator of the estate of said William Cummins, deceased; that said Mary Cummins is the only daughter and sole heir of said William Cummins, and an infant under the age of twenty-one years; that, on the 20th day of April, A. D. 1844, the said judgment, so received by said complainant in said Circuit Court of the United States for the District of Arkansas, was, by the consideration and judgment of said Court, revived against said Ebenezer, as administrator of the said William, deceased, and against said Inglish and Gibson; that the general and specified lien of said complainant under and by virtue of said judgment, and the levy by said marshal of said fi. fa. thereunder, still continued unexecuted and unimpaired; that the said damages and costs, so recovered by said plaintiff in said Circuit Court of the United States, against said Inglish & Gibson and said William Cummins, and so revived against said administrator, as aforesaid, and said other defendants therein, except said Johnson, and all and every part of said damages and costs, except the sum of eight hundred dollars, by said plaintiff remitted in said Court, on the 4th day of May, 1842, and the said sum of one hundred and fifty dollars, collected by said marshal, on said writ of ven. ex., prosecuted out of said Court on said judgment, collected on the 20th day of November, A. D. 1843,

still remain wholly unpaid and unsatisfied; that the said sale by said marshal, under the said writ of ven. ex., was wholly void and of no effect; that the said sale by said commissioner, under the said decree in this Court, at which said Farrelly became and was the purchaser of said lands, as the agent of said Notribe, is wholly void, annulled, and vacated by the judgment of the said Supreme Court in said cause; that said complainant is entitled to have his said general and specific lien on said lands, under and by virtue of said judgment in said Circuit Court of the United States for the District of Arkansas, and the levy by said marshal of said fi. fa. issued on said judgment, as aforesaid, enforced.

It is therefore ordered, adjudged, and decreed, by the Court, that, unless the said defendants herein, or one of them, do pay to said complainant, on or before the first day of March next, A. D. 1848, the said damages, less the said sum of eight hundred dollars, so by said plaintiff in said judgment remitted, together with interest thereon from the rendition of said judgment as aforesaid, and also all his costs therein, except the said sum of one hundred and fifty dollars, so collected by said marshal on said ven. ex., as aforesaid, that then, and in default thereof, the said lands be sold at public auction, to the highest bidder, for cash, on the fourth day of the next term of this Court, between the hours prescribed by law for judicial sales, at the court-house door of the County of Chicot, by Johnson Chapman, Esquire, who is hereby appointed a commissioner to make said sale; that said commissioner give notice of said sale by one advertisement, to be put at the court-house of the said County of Chicot, at least thirty days preceding said sale; that out of the proceeds of said sale he pay first the expenses thereof, and the costs of this suit, and the *the* residue of said damages and interest thereon, and costs aforesaid; and the residue, if any, he pay into this Court, with his report, &c.; and that, unless said defendants, Ebenezer Cummins, Frederick Notrebe, and Terrence Farrelly, be and appear here by the third day of our next term, and show good cause for not before appearing, this decree shall be final in the premises against them.

And afterwards, to wit, at the May Term, A. D. 1848, of said Circuit Court, on the 12th day of May, A. D. 1848, the following entry was made of record in this cause, to wit:

GEORGE C. BRENIMAN, Complainant,
v.
EBENEZER CUMMINS, as administrator of the estate of William Cummins, deceased, and MARY CUMMINS, infant daughter and sole heir of said William Cummins, dec'd, Defendants.

And now, at this day, Johnson Chapman, Esquire, who was appointed at the last term of this Court, as commissioner in this cause,

to make sale of the lands and premises in said bill mentioned, and under and by virtue of the decree rendered at the last term of this Court directed to be sold, presented and filed here his report in writing of his proceedings under and by virtue of said decree: wherein he sets forth, that, in obedience to the mandate of said decree, he made due notice of said sale of said lands, by putting up one advertisement thereof, in writing, at the court-house door of said county, more than thirty days before said day of sale, and that he did on the 11th day of May, A. D. 1848, that being the fourth day of the next term after said decree, offer and expose to sale, at public vendue, to the highest and last bidder, for cash, at the court-house door of said county, in the town of Columbia, all of the lands in said decree mentioned and described, and that at such sale so made, George C. Breniman became the purchaser thereof, at the sum of five hundred dollars, for the whole of said several tracts or parcels of land, he being the highest and last bidder for said lands, at that price; that he has executed a deed to the said George C. Breniman; that he has paid over to said complainant the said sum of $500, and said commissioner files here the receipt of said complainants for said sum, and also produced said deed, to said complainant, and here, in open Court, acknowledged that, as such commissioner, he had executed the same, for the consideration and purposes in said deed mentioned and set forth; and no objection being made to said report, it is ordered by the Court, that the said report and also said sale be approved and confirmed, and said commissioner discharged.

And the sum of twenty-five dollars is hereby allowed to said Commissioner for his services herein, to be paid by said complainant.

The following is a copy of the report of Commissioner referred to in the foregoing order, which are in the words and figures, to wit:

State of Arkansas, Chicot County, *ss.*

In the Circuit Court of Chicot County, May Term thereof, A. D. 1848.

GEORGE C. BRENIMAN, Complainant,
v.
EBENEZER CUMMINS, administrator of the Estate of WILLIAM CUMMINS, dec'd, and Mary CUMMINS, infant daughter and sole heir *heir* of said WILLIAM CUMMINS, dec'd, Defendants. } In Chancery.

Johnson Chapman, Commissioner, duly appointed in and by the decree in this case rendered at the November Term hereof, A. D. 1847, on the 13th day of November, to make sale of the lands in said decree mentioned and described, hereby respectfully reports to the honorable the Judge of said Circuit Court, in Chancery sitting, that he did, in compliance with the mandate in said decree contained, make due advertisement of said sale of said lands, by putting up one

advertisement thereof in writing at the court-house door of said County, more than thirty days before said day of sale, and that he did on the 11th day of May, A. D. 1848, that being the fourth day of the next term after said decree of said Court, offer and expose to sale, at public vendue, to the highest and last bidder, for cash, at the court-house door in said County, in Columbia, all of the lands in said decree mentioned and described, and that at such sale so made, George C. Breniman became the purchaser thereof at the sum of five hundred dollars, for the whole of said several tracts or parcels of land, he being the highest and last bidder for said lands at that price, and that he has executed a deed to the said George C. Breniman, which he herewith returns. That he has paid over to the said complainant the said sum of $500, and he herewith files this receipt for said sum, and he also herewith files the notice so given by him as aforesaid of said sale, all of which is respectfully submitted.

(Signed) JOHNSON CHAPMAN,
Commissioner.

Received, May 11th, 1848, of Johnson Chapman, the within-named Commissioner, the within-named sum of five hundred dollars *dollars*, proceeds of sales of lands sold as within mentioned.

(Signed) GEORGE BRUNGARD,
For GEO. C. BRENIMAN.

The following is a copy of the notice given by said Commissioner, to wit:

Commissioner's Sale of Lands in Chicot County.

Pursuant to a decree rendered by the Chicot Circuit Court, in Chancery, at the November Term, 1847, wherein George C. Breniman was plaintiff, and Ebenezer Cummins, as administrator of the estate of William Cummins, deceased, and Mary Cummins, his sole heir, were defendants, I, Johnson Chapman, Commissioner under said decree, will expose to sale and sell at the court-house door, in the town of Columbia, on Thursday the 11th day of May next (it being the fourth day of the next May Term of said Court), the lands mentioned in said decree, to wit: The south frl. half of the northwest quarter of section 10; the northwest frl. quarter of the northwest frl. quarter of said section 10; the northeast frl. part (east of Grand Lake) of northeast frl. quarter of section 9.

The southeast frl. quarter (east of Grand Lake) of frl. section 4½ and

The southwest quarter of frl. section 3, all in Township nineteen (19) south, Range one west, also the west half of the southeast quarter of section 34; the southeast quarter of the northeast quarter of section 34; the north frl. half of the northeast frl. quarter of section 34, and the southwest quarter of the northwest quarter of section 35, all in Township eighteen (18) south, of Range one (1) west,

and lying and being situate in said County of Chicot, which lands will be sold to satisfy the amount adjudged by said decree, for cash in hand, to the last and highest bidder.

(Signed) JOHNSON CHAPMAN,
Commissioner.

COLUMBIA, Ark., Jan'y 18, 1848.

State of Arkansas, County of Chicot.

I, Samuel W. Cooper, Clerk of the Circuit Court of Chicot County, in the State of Arkansas, do hereby certify, that the one hundred and eight preceding pages, and this page, contains a full, true, and perfect transcript of the record and proceedings in the suit therein mentioned.

In testimony whereof I have hereunto set my hand
[L. S.] and affixed the seal of my office at Columbia, this 27th day of January, A. D. 1852.

SAM'L W. COOPER,
Clerk.

Exhibit D, is not copied in this transcript.

Attest: SAM'L W. COOPER,
Clerk.

Exhibit No. 2.

Filed 11th March, 1852.

WM. FIELD,
Clerk.

State of Arkansas, County of Arkansas.

The State of Arkansas to all to whom these presents shall come, greeting:

Know ye, that the last will and testament of Frederick Notribe, of Arkansas County, deceased, hath in due form of law been exhibited, proven, and recorded in the office of the Clerk of Probate for Arkansas County; and inasmuch as it appears that Terrence Farrelly, Lewis L. Refild, and A. B. K. Thetford, has been appointed executors in and by said last will and testament, to execute the same; and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein; and that the said last will may be executed according to the request of the testator—we do hereby authorize the said Terrence Farrelly, Lewis L. Refild, and A. B. K. Thetford, as such executors, to collect and secure all and singular the goods and chattels, rights and credits, which were of the said Frederick Notribe at the time of his death, and in whosesoever hands or possession the same may be found; and to perform and fulfil all such duties as may be enjoined upon them by said will, so far as there shall be property and the law charge them, and in general to do and per-

form all other acts which now are or hereafter may be required of them by law.

In testimony whereof, I, Geo. W. S. Cross, Clerk of the Circuit Court and ex-officio Clerk of the Court of [L. S.] Probate, in and for the said County of Arkansas, have hereunto set my hand and affixed the seal of said Court, at office, this 7th day of June, A. D. 1849.

G. W. S. CROSS,
Clerk.

Last will and testament of Frederick Notribe, deceased, Arkansas Post.

Folio 1st. In the name of the Almighty, I, Frederick Notribe, of the County and State of Arkansas, residing now at the Post of Arkansas Village, having to give up my mortal spirit to the earth when it pleases my Creator, I have written and dedicated this, my only and last will or testament, as follows:

Article 1st. Being lawfully married in 1811, to Mary Felicite Bettitto, my present and beloved wife, she will be my legatee after my *after my* decease, of the one half of all my estate, real or personal, for her lifetime; and the half will be for my *to* heirs, my son John, and my granddaughter Mary F. Cummins, to equal share, or to each branch of their decents, when and after my just debts shall be paid.

Article 2d. My dear and beloved wife, Mary Felicitee, will have the option and priviledge in her division of the one half of all my estate as a life dower, after my just debts paid, to keep with her and for her service, what slaves she wants, she pleases to choose for her share, and will have also the choice of my cotton plantation (8 miles below the Post), where I now cultivate, or the premises at the Post of Arkansas, where I now reside, to make her own residence, which will be valued and appraised with impartiality by my said two heirs, John and Mary, if they are of age, or their guardians, hereinafter named, and by my said wife, and by three disinterested persons, by them appointed, to that effect, if they think it necessary; should some of the servants *servants* allotted to my wife share for her service, ever averse and refractory to her command, she will have the priviledge to sell or exchange them at any time she thinks proper for her own benefit or interest, without the *ascent* of my two heirs, John and Mary; and, knowing the fondness and love of my beloved wife for our dear John and Mary, I am *shure* that she will never injure their interest, be me granting to my dear wife such latitude to sell or exchange such refractory servants or servant at her own pleasure.

Article 3d. In case of a second marriage by my wife Mary Felicite, after my decease (which is not probable), the clause mentioned in her favor, in the article *one* and *two* of this my present will or testa-

ment, will be null and void; and she will receive from my estate only what the statute laws of the State of Arkansas allow to *widow* for their dower; and such case my said two heirs, John and Mary, if of age, or by the call of their guardians, if yet minors, will have and divide and additional respective share, to be distributed in the same proportion of one half each to my two heirs, John and Mary, or to their legitimate descents.

Article 4th. My granddaughter, Mary F. Cummins, will receive on account, and as a part of her share of my estate, all the money due me by her late father, Wm. Cummins, as cash advanced to him in several times, to help him in paying his share of purchases and entries of lands, made in partnership between him, the said Cummins, am myself, as it will appear by his three notes in my favor and to my order, amounting to the sum of twelve thousand ninety dollars and eighteen cents, as principal, at the date of March 17th, 1841, bearing interest of six per cent. per annum for ten years, or until paid for; which amount of $12,090 18 cts., I hold a mortgage on lands situate in Arkansas and Desha Counties, to secure payment, which mortgage is recorded in each office of record in said two Counties. Also my granddaughter Mary will *receiv* on account, and as a part of her share of my estate, a receipt given to me by her father and mother, for two thousand seven hundred forty-one dollars and fifty-eight cents (2741 58 cts.), bearing no interest, being cash advanced to them, William Cummins and his wife, my dear and beloved late daughter, Francine, to help them in their first year of marriage.

Article 5th. My said granddaughter, Mary F. Cummins, will not receive anything of the above two notes and receipt, mentioned in the Article 4th, until she be of age, or married to a man of age. My wife, Mary Felicite, with my son John, when of age, and the guardians hereinafter named, are appointed and constituted the lawful agents to superintend all her interests during her minority, and will have a particular care of William Cummins' three notes and mortgage, in my favor, amounting to twelve thousand and ninety dollars and eighteen, principal, and one receipt, for cash advanced, of two thousand seven hundred forty-one dollars and fifty-eight cents ($2741 18 cts.), without interest. The said lawful agents above-named will also superintend John and Mary's education, in case of need, which will be paid out of my estate, without any charge against them individually.

Article 6th. Should my granddaughter, Mary F. Cummins, die before to be of age, or before marriage, my son John, or his legitimate descents, will be the sole heirs of my *of my* said granddaughter, of all the amount of patrimony allotted to her, as her share coming to her from my estate, as cash, real and personal property; and also, if my granddaughter die after marriage, without any lawful progeniture, it is my absolute will, intention, and desire, that my son John, or his legitimate heirs, inherit from her, my granddaughter

Mary, all and singular her goods and chattels, real property and slaves, as a patrimony coming and arising from my estate.

Article 7th. If my son John was to die without any lawful issue, his mother, Mary Felicite, my beloved wife, will be his heir, first, *off* all and singular his goods and chattels, real property and slaves, as a patrimony received by him, my son John, from my estate; and after the decease of my beloved wife, Mary Felicite, my granddaughter Mary, or her lawful descents, will inherit from my dear wife, as our lawful heirs and descents, all the real and personal property left by my said beloved wife, Mary Felicite.

Article 8th. To secure to my said granddaughter, Mary Felicite Cummins, the peaceable possession and enjoyment of the amount of money and property that she will receive as her share of my estate, and to prevent my granddaughter Mary's husband to make *to make* bad use of her property, without her consent and agreement, a contract of marriage will be made and entered between the parties (her husband and herself), before a notary and a court of record, giving a full description of the amount of cash, real and personal property, number of slaves, with their names and ages, as received by her my granddaughter Mary, from my estate, by and through the care of the legally-appointed executors, executrix, and guardians hereinafter named, who will have jointly the right and latitude, in case of necessity, to appoint a good lawyer to help them, in the execution and effect of every word and sentence contained in this, the eighth article of my *prest.* and last will or testament.

Article 9th. As it is my absolute will and desire, that my granddaughter, Mary Felicite Cummins, be my heir to equal share with my son John; it is also my absolute will and intention, that my said granddaughter, Mary Felicite, and her husband (if married) in any time, jointly or separately, that they have no right to demand a sale or division of my real or personal property, without the free consent and agreement of my said son John, reserving to himself, my son John, assisted by two disinterested persons, named by himself and by Mary, to have an inventory made of all my estate, and to be controlled by my said son John, as he thinks best for the interest of both his niece, Mary, and himself, prohibiting Mary's husband to interfere, in any way whatever, with my son John's operations in conducting the general interest of my estate in the same time. I rely upon the honor, justice, and equity of my said son, John B. Notrebe, to divide strictly with his niece, Mary, the half of all revenue coming and arising from my estate; I mean from their both shares, reserving to my beloved wife the entire half of said estate, as mentioned in Article 1st, of this my present will or testament. This clause, giving my son John all power to manage my estate alone, is to prevent Mary's husband, who may be *an ambitious*, to *forse* a *sal* or *divesion*, at a *grate sacrefise* of my family property. Moreover, it is my absolute will and determination, that my son

John be free from any annoyance whatever, from Mary's husband, or anybody else, in the government of the general interest of my estate, jointly with his mother, my dear and beloved wife.

Article 10th. Having already given as a gift by a deed and a bill of sale, under date of July 17th, 1835, some real property and slaves to the late John B. Bettitto (alias Enselima), my father-in-law, which has not been expended by him in his lifetime; the same property is to be revertable as a life estate to his widow, Elizabeth Bettitto, my mother-in-law; and having also *secure* to the said late John B. Bettitto by an instrument of writing, under date of July 17th, A. D. 1835, a sum of three thousand dollars in property at fair valuation, to be received from estate after my decease, if in need of it; now the said clause is in favor of and revertable to said Elizabeth Bettitto, my mother-in-law, and my absolute desire and will are that this promise be effected after my decease, if she is in want, and to be fulfilled to the last point; and I recommend my beloved wife and my two heirs, John and Mary, to continue to cherish her in her old age, and to treat her well in procuring my mother-in-law as a good a maintainance as circumstances will able my wife and two heirs, John and Mary, for their good old mother and grandmother.

Article 11th. After the decease of my beloved wife, Mary Felicite, the share of property left to her as a life estate, as mentioned in the Article first of this my will or testament, shall revert directly to equal share to my only two heirs, John and Mary, or to their legitimate heirs or descents, with the same condition and restriction concerning my granddaughter Mary, and her husband, as mentioned in the Articles 8th and 9th of this my present will or testament.

Article 12th. For the execution of this my last will or testament, I name, appoint, and constitute, for my executors and executrix, jointly and together, my beloved wife, Mary Felicite, and my son John, when of age, with my friends Terrence Farrelly, Wm. B. Wait, Louis Loumas Refeld, and A. B. K. Thetford, also executors and guardians, allowing to each of them the sum of five hundred dollars for their trouble; should some of the above named persons refuse to serve, my dear wife, Mary Felicite, will have the power to appoint some other in their place if she thinks proper.

Article 14th. I, Frederic Notrebe, declare before my God, that I have written and dictated this present my last will or testament, containing thirteen articles (No. 1st to 13th), being of my own style and orthography, and being in my very good health, good sense and reason, voluntarily and without the compulsion of anybody, neither by influence of relations or strangers.

Given under my hand and seal, this month of October the 24th, Anno Dias, 1843, in presence of Saml. Mitchell, Wm. A. Doherty, G. W. S. Cross, and John L. Jones, witnesses called expressly by myself for the purpose of giving authenticity to this present, the only act of

the kind called my last will or testament, as it is my serious intention that *he* be respected in all its tenor, and be valid, and to stand good, genuine, and unchangeable in law or equity, and to sacred as it is made to-day against the chicanery and subtilty of law.

FREDERIC NOTREBE. [SEAL.]

Sealed, signed, and acknowledged and declared by the testator, Frederic Notrebe, to be his last will or testament, in our presence, this October 24th, Anno Dios 1843, and we hereto affix our names as witnesses at his request.

SAML. MITCHELL.
WM. A. DOHERTY.
G. W. S. CROSS.
JOHN L. JONES.

These four witnesses are resident citizens of the County of Arkansas and the State above named.

State of Arkansas, County of Arkansas.

In Arkansas Probate Court, in vacation, May 31, A. D. 1849.

Personally appeared before me, Geo. W. S. Cross, Clerk of the Circuit Court, and ex-officio Clerk of the Probate Court in and for said County, Samuel Mitchell, and John L. Jones, to me personally well known as two of the persons whose names are signed to the above and foregoing last will and testament of Frederic Notribe, late of said County, deceased, and who, being by me first duly sworn according to law, to testify and speak the truth, the whole truth, and nothing but the truth, in regard to the execution of the said last will and testament, deposeth and say, that the said Frederic Notribe signed and sealed the said will and testament now exhibited to us, and hereunto annexed, bearing date the 24th day of October, A. D. 1843, in our presence and in the presence of the other subscribing witnesses, to wit, William Doherty and Geo. W. S. Cross, and declared the same to be his last will and testament; and the said deponents further depose and say, that the said Frederic Notribe at the time of execution of said will and testament as aforesaid was of sound and disposing mind and memory, and these deponents subscribed their names as witnesses, in the presence of the said Frederic Notribe, to the said last will and testament at his request, and also in the presence of William A. Doherty and Geo. W. S. Cross, the other witnesses to said will, who subscribed their names thereto as witnesses, in presence of said Notribe, and at his like request, and further deponants sayeth not.

SAML. MITCHELL,
JOHN L. JONES.

Sworn and subscribed before me, this 31st day of May, A. D. 1849.

G. W. S. CROSS,
Clerk.

I, George W. S. Cross, Clerk of the Circuit Court, and ex-officio Clerk of the Probate Court, in and for the county aforesaid, do hereby certify, that Samuel Mitchell and John L. Jones were, on the day and year aforesaid, by me duly sworn according to law, and their depositions as aforesaid reduced to writing and subscribed by them in my presence.

In witness whereof, I have hereunto set my hand as such
[L. S.] Clerk, and affixed my official seal at office, in the Post of Arkansas, this 31st day of May, A. D. 1849.

G. W. S. CROSS,
Clerk.

State of Arkansas, County of Arkansas.

I, W. H. Halli Burton, Clerk of the Circuit Court, and ex-officio Clerk of the Court of Probate, in and for the County of Arkansas aforesaid, do hereby certify that the annexed and foregoing ten pages contain a true and complete copy the letters testamentary, granted on the Estate of Frederic Notribe, together with the last will and testament of the said Notribe thereto annexed.

In testimony whereof, I have hereunto set my hand and
[L. S.] affixed the seal of said Court at office, this 1st day of January, A. D. 1852.

W. H. HALLI BURTON,
Clerk.

Filed 11th March, 1852.

Attest, WM. FIELD,
Clerk.

Exhibit X.

This indenture, made this 2d day of April, A. D. 1842, at the City of Little Rock, in the State of Arkansas, between the Real Estate Bank of Arkansas, a corporation duly established by law in said State of Arkansas, of the first part, and James S. Conway, Samuel C. Roane, Carey A. Harris, Daniel T. Witter, George Hill, Enoch J. Smith, Henry L. Biscoe, William F. Moore, John Preston, Jr., John Drennen, Robert S. Gibson, Lorenzo N. Clarke, Sanford C. Faulkner, Anthony H. Davies, and Silas Craig, of said State, Trustees appointed for the purposes hereinafter mentioned, of the second part: Whereas, an ordinance was passed by the Central Board of said Bank, on the 1st day of April, A. D. 1842, in the words following, to wit: "Whereas, this Bank is at present unable to pay the immediate demands upon it, to resume the payment of specie on its notes, to meet the interest upon the bonds of the State issued to it, or to protect its debtors from harassment and oppression by the holders of its notes; and whereas it is deemed just and reasonable that its creditors should be secured, paid, and indemnified, and its circulation called in, and, at the same time, its debtors guarded against oppression and ruin, and enabled to discharge the debts due by them to the institution. Therefore,

Be it ordained by the Central Board of the Real Estate Bank of the State of Arkansas, that the affairs of this Bank be placed in liquidation, by an assignment of all the property and assets of this Bank to Trustees, to be appointed by this Board, upon whom shall be conferred the power of settling the affairs of the Bank by collecting the debts due it, in certain instalments and at certain times; and paying its debts and liabilities in a certain order, to be in said assignment provided; with all other powers necessary to carry into effect the objects of the trust so created; and that the attorney of the Bank prepare such deed of assignment, which when approved by this Board, shall be duly executed, and take effect."

And whereas, the above named parties of the second part have been appointed by said Central Board, as such Trustees, under and in pursuance of said ordinance.

Now, therefore, this indenture witnesseth, that, for the purposes and considerations herein contained, and in consideration of one dollar, paid to said party of the first part by said parties of the second part, the receipt whereof is hereby acknowledged, the said party of the first part doth by these presents grant, bargain, sell, convey, assign, transfer, and set over, unto the said parties of the second part, and their assigns, all and singular the estate, real and personal, debts, choses in action, property, effects, and interests, either legal or equitable, of every description, belonging to the said party of the first part, or in which it has any right or interest whatsoever, mentioned, contained, or referred to in the schedule hereto annexed, marked A., or intended so to be, although therein omitted. To have and to hold, all and singular, the premises herein assigned, or otherwise assured, or intended so to be, to the said parties of the second part, their heirs, assigns, successors, and survivors, to their use and behoof forever. But upon trust, that the said parties of the second part shall, with all reasonable speed, sell and dispose of such part of the said trust property and effects as are of a saleable nature, and shall use their best endeavors to obtain, recover, and receive such parts of the same as consist of debts or other outstanding interests, into their hands and possession, in the manner, by the amounts and instalments, and at the times hereinafter particularly specified; and forthwith, after the receipt of any moneys from any source, after deducting and retaining the compensation due for their services, as hereinafter provided, and all such costs, charges, damages, travelling expenses, and other expenses and disbursements as shall be sustained, incurred, or reasonably due, in, for, or in relation to the execution of the trusts hereof, then upon trust that the said parties of the second part do and shall appropriate all moneys so received, to and in payment of the liabilities, debts, and obligations of said Bank, in the manner and order following, to wit: first, in paying, in Arkansas Bank notes, all balances of salaries or compensations which may be due to any the officers, agents, or attorneys of said Bank. Second,

in paying, in such currency as that wherein they were deposited, all deposits which may be in said Bank at the time of executing these presents, due or belonging to any individual, firm, or corporation, and all balances which may be standing on the books of said Bank, due to other banks or individuals, all which liabilities of said first and second class shall be paid in the order in which they are above named, in full, and as soon as they are claimed or demanded. Third, in calling in and redeeming the outstanding circulation or notes payable of said Bank, to be taken in and paid in the manner hereinafter provided. Fourth, in paying the interest which may become due on one thousand five hundred and thirty bonds of said State, of one thousand dollars each, bearing interest at the rate of six per centum per annum, issued to said Bank, being the following described bonds to wit: five hundred bonds sold to the Treasury Department of the United States, one thousand bonds sold to J. D. Bens, of New York, and thirty bonds sold to Col. R. M. Johnson, of Kentucky. Fifth, in paying the bonuses which may become and fall due to said State of Arkansas from time to time, in accordance with the provisions of the charter of said Bank. Sixth, in paying the principal of the bonds of the State aforesaid, the same being all the bonds of said State ever issued to said Bank, except five hundred bonds which were hypothecated to the North American Trust and Banking Company, a corporation in the City of New York, and by said North American Trust and Banking Company illegally, and in violation of their faith, sold or pledged to Hottord & Co., of London. And, seventh, in paying the amount which was actually received by said Bank on the hypothecation of said last-mentioned bonds, but upon the contingency, and only in the event, that said last-mentioned five hundred bonds can be procured and delivered up to said trustees upon the payment of said sum so actually received, with interest an exchange, or of whatever other amount may be legally due on said last-mentioned bonds; which liabilities of said fourth and sixth classes, respectively, in case there should not be sufficient assets to pay the whole of the liabilities in either said fourth or sixth class, shall be paid, respectively, after all liabilities in prior classes are paid, ratably and in proportion to the amounts due to each holder of said bonds, the payment of which is so provided for without any preference or priority. And upon the trusts, also, that said parties of the second part shall diligently endeavor to call in and redeem the circulation or notes payable of said Bank, as speedily as may be possible, to which end they may grant and issue to every person who shall deliver to them notes of said Bank to the amount of one hundred dollars or upwards a certificate of deposit for the amount so delivered, bearing interest at the rate of six per centum per annum; and all such depositors who may make such deposits within twelve months from the date of these presents shall be preferred over all other holders of the circulation of said Bank, and shall be paid by said parties of the second part, in

preference to any other such holders of said circulation, out of the first good funds received, after said liabilities of the first and second class are discharged, the amount of their respective certificates of deposit, ratably and in proportion to the amounts of the certificates of deposits of each, respectively, without any preference or priority.

And upon the trust, further, that the said parties of the second part shall proceed to collect the debts due said Bank, in the manner following, to wit: That all persons indebted to said Bank upon bond, bill, note, or otherwise, including stockholders as well as other persons, and as well the arrearages of principal and interest due by such stockholders on their notes or bonds given for moneys borrowed on their stock credit, under the provisions of the seventeenth section of said charter, as moneys due by them on other notes, but not including the amounts either of principal or interest hereafter to become due on the notes or bonds executed by them, for their stock credits, and excepting also all amounts due to said Bank upon judgments, or in suit, or litigated otherwise than for mere delay, and all amounts secured by deed or deeds of trust, shall be allowed and permitted, upon paying the said trustees before the first day of January, A. D. 1843, all arrears of interest due by them, and interest in advance upon the residue remaining due for one year, and giving satisfactory security to execute their note with such security, bearing interest at the rate of eight per centum per annum to said Trustees, by name as Trustees, or their successors or survivors, for the residue of their debt, payable at twelve months from the date thereof, and shall be permitted and allowed to renew their said notes from year to year, and every year for eight years, by paying up when each note falls due, the amount of twelve and a half per centum on the amount of the first note so to be given as aforesaid, and interest on the residue, at the rate aforesaid, for twelve months in advance, so that the whole debt shall be extinguished in said period of eight years from the date of said first note. And that the amounts to fall and become due from stockholders, on their notes or bonds given for their stock credits, as aforesaid, whether instalments or interest shall be paid at the times and in the manner prescribed by said charter, and fixed by the terms of such notes or bonds, each being entitled, however, to the same privilege, whatever may be the form of his note or bond so given, and whether it be in form a stock note, or a note or bond payable at a day certain, with personal security, and that the legal representatives of any stockholder deceased, or who may hereafter depart this life, may pay the stock debt of the deceased in the same manner, by giving their own note with sufficient personal security, renewable from year to year, and payable by such instalments of principal and interest as their testator or intestate would have paid under the foregoing provisions. In payment of all which debts the said parties of the second part shall be empowered and required to receive the notes of said Bank, or its branches, if offered, at

par: Provided, however, That said Trustees shall proceed to collect and receive all moneys due on judgments in favor of said Bank, and all debts now in suit and prosecuted by said Bank, where the defendant or defendants are, or have been endeavoring to defend against and altogether avoid the payment of the same, in specie, and as soon as by law they may be enabled so to do: but, Provided further, That if, in any such case, the Trustees should ascertain that the attempt to coerce the immediate payment of any such debt will result in the loss of the same, or of a considerable portion thereof, and it can be saved by an extension of indulgence, they may, by an unanimous vote of the Executive Board, hereinafter mentioned, but not otherwise, nor for any other cause or reason whatever, extend the time of payment to such time and on such terms as they may deem expedient, so that it shall be collected in the space of eight years from the first day of January next, at furthest; and Provided further, That where any debt is secured by deed of trust on property, the Executive Board, hereinafter mentioned, shall either proceed to enforce such deed of trust by suit or sale, or shall extend the time of payment as in other cases, as the nature of the case may require, but that Col. Richard M. Johnson shall be permitted, at any time within one year from this date, to furnish and deliver to said Trustees, thirty bonds of the State, of any of the bonds issued to said Bank, except those hypothecated to said North American Trust and Banking Company, as aforesaid, upon furnishing which, and paying all the interest on his debt to said Bank which shall then be due, his deed of trust heretofore executed to said Bank shall be cancelled. And Provided further, That any debtor of said Bank, who shall hereafter be the holder of any of said one thousand five hundred and thirty bonds shall be credited upon any his indebtedness to said Bank, for and with the amount of interest and exchange falling due on the bonds so held by him, from time to time, and at every time when said interest and exchange shall so fall and become due.

And it is further hereby agreed, by and between the parties hereto, that the said Trustees may, at discretion, compound any debt or debts due, or owing to, or by the said party of the first part, enter into, sign, and execute, seal and deliver any bargain or deed of composition, compromise, or assignment, of or with any persons indebted to the said party of the first part, who shall become, or be insolvent, or unable to make punctual payment, and may receive or dispose of property, real or personal, in payment or satisfaction of debts due to or owing by said party of the first part, and also may make any such agreement or arrangement as shall be deemed reasonable with any persons possessing any security given by said party of the first part, upon any estate or other property of or holden by it, or by any of its creditors, by way of mortgage or pledge for money, or with any person having a lien on any such property by virtue of any attachment, judgment, levy, bailment, or otherwise, in order to procure

such estate or property to be exonerated from the lien, or charge credited therein, and also, may sell all or any part of the said trust property, for money to be paid on a future day, or on credit, or for any security, by way of bill of exchange, or otherwise, as the said Trustees shall think expedient, and may compromise all matters which may be in dispute, or submit the same to arbitration, and may sell and convert into money all contingent interests and securities which cannot be immediately enforced with a prospect of advantage, and all debts which shall be deemed bad or doubtful, or which cannot be collected in the manner hereinbefore specially provided.

And it is further agreed, that the naming any debt or debts in any schedule hereto annexed, shall not prevent the parties of the first or second part from calling in question, or controverting the amount of the same, or taking any course at law or equity to have the same disallowed or adjusted, and that, if the demand of any creditor shall have been stated as being greater or smaller than it really is, such creditor shall be entitled to the benefit of these presents, upon and for, and only upon and for, the amount which may be found to be justly due him. And the said party of the first part by these presents doth name, constitute and appoint the said parties of the second part, and their successors and survivors, to be its attorney irrevocable in their names, or in the name of said party of the first part, or otherwise howsoever as the case may require; but to and for the trusts herein described, to demand, sue for, recover and receive, the outstanding debts, interest, trust property, and effects aforesaid; and to institute, prosecute, and defend, all such suits and processes, at law or in equity; and to execute, perform, and transact all such deeds and writings, acquittances, acts, matters, and things, as shall be necessary or expedient to carry into effect the trust, uses, intents, and purposes herein declared or contained; and to make settlements with any and all present or former officers and agents of said Bank, as fully and effectually as the said party of the first part could in anywise do, if these presents had not been made.

And it is further hereby declared and agreed, by and between the parties to these presents, that each of said trustees, and their successors, shall give bond, with security, approved in writing by any three stockholders in said Bank, owning not less then fifty shares of stock each, to the attorney of the Bank for the time being, by name, and his successors, for the benefit of all persons concerned or interested, in the sum of twenty thousand dollars, conditioned for the faithful performance of all duties imposed upon them, under and by virtue of these presents, and for the faithful execution of the trusts hereby created: and that for and during the full space and term of two years from the date of these presents, there shall be five committees of said trustees, each to consist of three members, and each to act as agencies of said trustees; one committee at each place

where the principal Bank and branches of said Bank are now situate; and that the following named trustees shall constitute said committees, to wit: the committee at Little Rock shall consist of James C. Conway, Carey A. Harris, and Samuel C. Roane; at Columbia, of Sanford C. Faulkner, Anthony H. Davis, and Silas Craig; at Helena, of Henry L. Biscoe, William F. Moore, and John Preston, Jr.; at Washington, of Daniel T. Witter, George Hill, and Enoch J. Smith; and at Van Buren, of John Drennen, Robert S. Gibson, and Lorenzo N. Clarke.

And it is further hereby declared and agreed, by and between the parties to these presents, that the duties and powers of each of said committees shall be to take charge of the books and papers of the respective offices of said Bank, to attend to the arrangement and collection of debts due said Bank, and the taking and renewal of notes, to determine upon the sufficiency of security offered; to make settlement with the officers and agents of said offices respectively; to pay out all deposits now on hand, and all balances due to officers; and generally to do, perform, and exercise all such acts, duties, and powers as said trustees may lawfully and in their discretion delegate to them as committees and agencies; that the members of said committees shall act without compensation, except when actually engaged in the performance of the trusts aforesaid, when each shall receive as his compensation the sum of three dollars for every day during which he shall be engaged; Provided, however, that no member of said committee at Little Rock shall be entitled to charge for more than one hundred and eighty days in any one year; and that *that* no member of any other committee shall be entitled to charge for more than seventy-five days in any one year.

And it is hereby further declared and agreed, by and between the parties to these presents, that there shall be an Executive Board of said trustees, to consist ofone member from each committee, who shall meet at the City of Little Rock, at least twice in each year, on the first Mondays of June and December, and at any and every other time when two members thereof shall call a meeting and notify the residue thereof; that the members of said Executive Board shall receive, in full pay for their services, the same compensation as is now allowed to the members of the Central Board of said Bank, and such other travelling expenses as may be necessarily incurred in the discharge of their duties; that the duties of said Executive Board shall be to make settlements, pay off liabilities, and to do all other acts and things, and exercise all powers, which, by this deed, said trustees are authorized to do and execute in the name of said trustees, or otherwise howsoever, and which are not, by these presents, required to be done by, or conferred upon said committees, or which may not be by said trustees delegated to said committees; that each committee shall, whenever any funds are received, forward the same to said Executive Board, and that each committee shall report to

said Executive Board, at each regular meeting of said Board, or as often as they may be required by said Board to do so, a full statement of the proceedings, and of the condition and situation of the affairs intrusted to them.

And it is further agreed, by and between the parties to these presents, that, until the first day of July next, or until their successors are elected, as hereinafter provided, said Executive Board shall consist of the following members, to wit, Carey A. Harris, Henry L. Biscoe, Sandford C. Faulkner, Daniel T. Witter, and Lorenzo N. Clarke, who shall immediately enter on the discharge of their duties; and that, previous to said first day of July next, each committee shall elect one of its own number a member of said Executive Board; and from said first day of July next, said Executive Board shall remain unchanged, except a vacancy is caused by removal, resignation, death, or otherwise, until the expiration of two years from the date of these presents; that each committee shall be authorized to fill any vacancy in its own number, and in its representation in the Executive Board during said term of two years from this date, the concurrence of two members being in every case necessary to a choice.

And it is further declared and agreed, by and between the parties hereto, that, at the expiration of two years from the date of these presents, the said trustees, or a majority of them, shall meet at Little Rock, on a day to be fixed by said Executive Board, and there elect five of their own number, who shall thereafter be sole trustees, and receive thereafter the same compensation hereby provided for said Executive Board, three of whom shall thereafter remain at Little Rock; and that said residuary trustees shall thereafter fill any vacancies occurring in their own number, by election, the concurrence of three members being in every case necessary to a choice; and that each of said committee shall, immediately on the expiration of said term of two years from the date of these presents, forward to said residuary trustees, at Little Rock, all the books, papers, records, funds and assets, effects and property, of said Bank, in their hands; and the duties of said committee shall then cease and determine.

And it is further hereby agreed and declared, that each of said committees, except the committee at Little Rock, may employ a competent clerk, who shall enter into bond, with security approved by such committee, to said trustees, their successors and survivors, in the sum of twenty thousand dollars, conditioned for the faithful performance of all duties devolving on him, as such clerk, and that he will duly account for all moneys and assets coming to his hands, and who shall receive a compensation of not more than one thousand dollars per annum, in full, for all his services.

And it is further hereby declared and agreed, that Thomas W. Newton shall be the cashier and secretary of said Executive Board, and of said residuary trustees as well as of said committee at Little Rock,

and shall have charge of all funds coming to the hands of said committee, board, or residuary trustees, and keep full, complete, and regular acoounts and books of all the acts and doings, receipts, and disbursements, of said committee, board, or residuary trustees, which books shall be open to the inspection of any stockholder, at any time; that, if said Thomas W. Newton should resign his said office of cashier and secretary, or the same should at any time become vacant, it shall be filled by an election by the said Executive Board or residuary trustees, and each cashier and secretary shall give bond, with security approved by said board or residuary trustees, to said trustees or their successors or survivors, for the benefit of all persons concerned or interested, in the sum of fifty thousand dollars, conditioned for the faithful performance of all the duties devolving on him, and that he will truly account for all moneys and assets coming to his hands, and that said committees shall have the same control over their clerks, and said Executive Board and residuary trustees over their cashier and secretary, as the directories of said Bank have over their cashiers by the charter and ordinances rules and regulations of said Bank.

And it is further declared and agreed, by and between the parties to these presents, that Albert Pike shall be the attorney for said trustees, and in that capacity shall be their legal adviser, and shall prosecute and defend all suits brought by or against said trustees or said Bank, or wherein said trustees or said Bank may be interested, and perform all other duties imposed on him, as such attorney, by said trustees; that the compensation of such cashier and secretary shall be twelve hundred dollars per annum, and of the attorney twenty-two hundred and fifty dollars per annum, in full, for all their services; that the cashier and secretary, and the attorney, shall be removable from office by said Executive Board or residuary trustees, for any misfeasance, malfeasance, or nonfeasance, in office, whenever the same shall be ascertained by said Executive Board or residuary trustees; that said trustees, and their successors and survivors, shall have full power to appoint, employ, and remove, any other necessary agents, attorneys, assistants, and clerks, and to fix, determine, and pay them reasonable compensation for their services; and that if any vacancy in the office of trustee, hereby required to be filled, shall not be filled within three months after it is created, the same may be filled by any chancellor, in this State, having jurisdiction, upon the application of any person interested.

And it is further hereby declared and agreed, by and between the parties to these presents, that said Executive Board may call a meeting of all said Trustees, at the City of Little Rock, whenever they may deem it necessary and expedient, and that each Trustee attending such meeting shall receive the same pay for his travelling expenses as is now allowed to members of the Central Board of said Bank, in addition to his per diem pay, hereinbefore provided for.

That a majority of each Committee, and of said Executive Board and Residuary Trustees, for the time being, shall govern in all cases of a difference of opinion, except where it is otherwise herein specially provided; nor shall it be necessary for the whole number of either, or of said Trustees, to unite in doing any act whatever, except where it is herein specially provided. That whenever it shall become necessary for said Trustees to execute any deed for lands, tenements, or hereditaments, they may, jointly or severally, by letter of attorney, authorize one of their number to execute and acknowledge such conveyance. And that any one of said Trustees, or their successors, may be removed from office for any misfeasance, malfeasance, or nonfeasance, whenever the same shall be ascertained and determined by any court of chancery in this State, having jurisdiction; and that, in case of the occurrence of any such misfeasance, malfeasance, or nonfeasance of any one of said Trustees, said Executive Board or Residuary Trustees may, by an unanimous vote, in charges distinctly preferred, suspend the offending Trustee, until the determination of the proper Court can be obtained.

And it is further hereby declared and agreed, by and between the parties to these presents, that said Trustees shall have power to compel all stockholders who have not perfected their titles or mortgages to the lands mortgaged by them to said Bank, to proceed to do so with all reasonable speed, and to secure said Bank, the State, and the bondholders, in conformity to the true meaning and intent of said charter.

And it is further hereby declared and agreed, by and between the parties hereto, that immediately upon and after the execution of these presents, each of the Board of Directors of said Bank shall deliver over to said respective Committees all the effects, books, papers, notes, and other evidences of debt, and all the moneys, bills, notes payable, and other assets in their possession, including all the circulation and notes of said Bank on hand; and that all such circulation and notes shall be by said Committee forthwith registered, cancelled, and transmitted to said Executive Board, and by said Board burned; and any circulation thereafter received by said Committees, shall be in like manner registered, cancelled, and transmitted to said Executive Board, and by said Board burned, whenever and as often as the sum of twenty-five thousand dollars is received by said Board, and on hand.

And it is further hereby agreed, by and between the parties hereto, that if the holders of the bonds of the State, the payment whereof is hereinbefore provided for, will take and receive all the assets of said Bank, assume all its liabilities, and release and discharge all the stockholders of said Bank from the obligations created by their stock-bonds, and by their mortgages, so far as the payment of said stock-bonds and interest is secured thereby, the said Trustees, their successors, or survivors, may enter into and complete such arrange-

ment; and all powers necessary to enable them to carry the same into full effect are hereby conferred upon them.

And it is further hereby declared and agreed, by and between the parties hereto, that it is not the intention of the said party of the first part, by these presents, to surrender or forfeit the charter of said Bank, if the same can by law be retained, and the trusts herein declared at the same time carried into effect; but that the several Boards of Direction, and Presidents, and the Central Board, shall exist and be regularly elected, to the end that said Bank may, after the completion of the trusts herein created, still continue, if it be deemed expedient by the stockholders, to exercise the powers and privileges conferred by said charter; but that no acts, duties, matters, or things, shall be done by said Directories, Central Board, or Presidents, inconsistent with the trusts herein created, until said trusts are completed; and that no salary shall henceforth be paid or allowed to any officers of said Bank, as such; and that if the Legislature of the State of Arkansas should hereafter pass any law in regard to or affecting said Bank, or the trusts herein created, which the said Trustees may, in their discretion, deem advantageous to said Bank, and to the parties interested in this assignment, they may regard the same, and conform their action thereto; but if not, they shall disregard such law, if they can legally do so.

And it is further declared and agreed, by and between the parties to these presents, that in case the judgment of the Circuit Court of the County of Pulaski, in favor of Rawdon, Wright, and Hatch, against said Bank, should be affirmed by the Supreme Court of the State of Arkansas, the said Trustees shall forthwith pay the same, in preference to all other claims, and release the funds held in pledge by the securities of said Bank, in the supersedeas bond in said case.

And it is further agreed and declared, by and between the parties hereto, that no trustee shall, in any case, become security for another trustee, or for any clerk, or for the cashier and secretary, in the bond required by this deed, to be given by each. And, finally, that all the grants hereby made to the persons vested in, and privileges conferred upon, said trustees, shall, at the expiration of two years from the date of these presents, enure and pass to, and vest absolutely, fully, and completely in, said residuary trustees alone.

And it is further hereby declared and agreed, by and between the parties hereto, that all and singular the grants made to, and the powers and privileges vested in, and conferred upon said trustees, by these presents, are made to, vested in, and conferred upon them and their successors and survivors, to be exercised as hereinbefore defined.

And the said parties of the second part, do hereby covenant with the said party of the first part, and its creditors, that said parties of the second part shall and will execute and perform the trusts in

them hereby reposed, to the best of their judgment and discretion. Provided, always, and it is hereby agreed, that each trustee for the time being, his executors or administrators, shall not be liable or accountable for more money or effects than he shall receive, nor for any loss or damage which may happen thereto, except the same shall arise by or through his own wilful default, and that each shall be answerable for himself, and not for the others.

And it is understood that any additions, corrections, or alterations, may be made in the schedule hereto annexed, for the more full and accurate specification of the matters and things therein contained, or intended to be contained. The cashier and secretary shall be allowed to occupy the banking house, at Little Rock, so long as it remains undisposed of. And it shall be the duty of the Executive Board, as the business of the Board draws to a close, and the duties of the cashier and secretary are rendered less arduous, to reduce in a proper ratio, at their discretion, the salary fixed by this deed for said cashier and secretary; and the attorney for the Bank shall be allowed to occupy a room in the banking house, in Little Rock, as his office, while the same remains undisposed of.

In testimony whereof, the said party of the first part, by Carey A. Harris, its President, hath hereunto affixed its corporation seal, and the said parties of the second part, hath hereunto set their private seals the day and year first aforesaid.

[Seal of the Bank.]

C. A. HARRIS,
President.

SAM. C. ROANE, [SEAL.]
L. N. CLARKE, [SEAL.]
D. T. WITTER, [SEAL.]
G. HILL, [SEAL.]
JOHN DRENNEN, [SEAL.]
JOHN PRESTON, JR., [SEAL.]
S. C. FAULKNER, [SEAL.]
A. H. DAVIES, [SEAL.]
W. F. MOORE, [SEAL.]
SILAS CRAIG, [SEAL.]
H. L. BISCOE, [SEAL.]
C. A. HARRIS, [SEAL.]
ENOCH J. SMITH, [SEAL.]

Signed and sealed by Sam. C. Roane, Lorenzo N. Clarke, Daniel T. Witter, George Hill, Sandford C. Faulkner, Anthony H. Davies, William F. Moore, Silas Craig, Henry L. Biscoe, and C. A. Harris, in our presence, April 2d, 1842.

(Signed) PETER HANGER,
E. H. ROANE.

Pulaski, *sct.*

Be it remembered, that on this fourth day of April, A. D. 1842, at the County of Pulaski aforesaid, before me, James C. Anthony, Judge of the County and Probate Courts of said County, came Carey A. Harris, President of the Real Estate Bank of the State of Arkansas, and acknowledged that he voluntarily executed and delivered the foregoing deed, and thereto affixed the seal of said Bank, as such President, for the uses, purposes, and considerations, therein mentioned; and, at the same time, came also Sam. C. Roane, Lorenzo N. Clarke, Daniel T. Witter, George Hill, Sandford C. Faulkner, Anthony H. Davies, William F. Moore, Silas Craig, Henry L. Biscoe, and Carey A. Harris, and severally acknowledged that they voluntarily executed the same, as such trustees, for the uses, purposes, and considerations therein mentioned. Given under my hand, the day and year aforesaid.

(Signed) JA'S C. ANTHONY,
Judge.

Schedule A.

The banking house at Little Rock, and the losts whereon it stands, now occupied by said Real Estate Bank.

The banking-house at Helena, and the lots whereon it stands.

The banking-house at Columbia, and the lots whereon it stands.

Four town lots in the town of Washington, Arkansas.

All the accommodation notes, bills of exchange, business notes, notes and bonds for money borrowed on stock credits, and all the interest of the Bank in mortgages given by stockholders.

All the specie on hand in said Bank and branches, being about $63,000.

All the specie means, and notes of other banks on hand.

All the cotton belonging to said Bank, being about 793 bales.

All the furniture, safes, and other personal property belonging to said Bank.

And, generally, all the property, real and personal, and all the effects and choses in action of said Bank, are to be hereafter more particularly specified.

Filed 11th March, 1852.

Attest, WM. FIELD,
Clerk.

In the Circuit Court of the United States, for the Eastern District of Arkansas, in Vacation, on the 22d of Oct. 1853.

WILLIAM W. WOODFOLK, Complainant,
v.
F. NOTREBE'S Executors, Widow, and Heirs, and the Trustees of the Real Estate Bank of Arkansas, Defendants.

And now, at this day, comes said complainant, and moves and

prays for a decree, *pro confesso*, against such of said defendants as have failed to answer said complainant's bill of complaint.

And will ever pray, &c.

TRAPNALL,
Solicitor for Complainant.

Filed 7th Nov. 1853.

WM. FIELD,
Clerk.

In the United States Circuit Court, Eastern District of Arkansas.
April Term, A. D. 1854.

The amended and supplemental answer of Edward C. Morton and Mary F. his wife, to the bill of complaint herein exhibited against them and others by William W. Woodfolk.

Respondents state, that the original bill of the said Woodfolk was exhibited and filed herein on the 23d day of September, 1851, and process issued thereon; and on the 11th March, 1852, these respondents filed their answer thereto and exhibits, which they pray may be taken as part hereof, to which answer a replication has been entered, and said cause thus put at issue.

Respondents further aver, that it is true, as alleged in their original answer, that under and in virtue of the contract and purchase of the lands in the bill mentioned, by the said complainant from said Frederic Notrebe, and very soon after such purchase was made, the said complainant obtained quiet and peaceable possession of the said lands; and he has ever since been in quiet and undisturbed possession thereof, and in full enjoyment of the rents, income, and profits of said lands, arising as well from the agricultural purposes to which said lands are applied, as well as from the sale of cord-wood cut from said lands, and sold on the banks of the Mississippi River; which profits and income, they believe and aver, annually, from the year succeeding the year in which said purchase was made, amounted to the sum of at least one thousand dollars, if not five times that sum, or more; and to a sum very greatly exceeding the amount of taxes and public dues assessed and collected thereon.

That when their original answer was filed therein, they never knew or suspected, and had no ground to suppose, that whilst said complainant was in possession of said lands, and so enjoying the possession and income from the same, under said purchase, he had neglected to pay the taxes upon said lands, or by any such contrivance as a tax sale had attempted, or would attempt, to procure and set up an independent title to the said lands, as against said Frederic Notrebe's title, and repudiate the purchase aforesaid, and endeavor to hold the lands in virtue of such tax title.

But they have very recently, by accident, discovered, and so aver, that in the year 1850, said Woodfolk failed and neglected to pay the taxes for State and county purposes aforesaid, and taxed upon said

lands in the County of Chicot, in the State of Arkansas; in pursuance of the laws of the said State, did sell said lands for the taxes, &c., assessed thereon for that year; and at such sale said Woodfolk actually purchased said lands himself for a sum less than one hundred dollars; and after the lapse of one year from the day of sale, took and received a deed for said lands from William J. Neale, the successor of said Threadgill, who had, in the meantime, died, whereby, in virtue of the statutes of said State, the title in fee in and to the said lands, was conveyed to and vested in the said William W. Woodfolk, which deed bears date the 14th October, A. D. 1852; and on the 15th October, A. D. 1852, was duly acknowledged in open Court by said Neale, as such sheriff and collector, before the Circuit Court of Chicot County aforesaid, and on the same day was filed for record, and was afterwards, on the 22d October, A. D. 1852, was recorded in the Recorder's Office, in said County of Chicot, as will at large appear by reference to a copy of said deed and certificates thereto attached, contained in the transcript of the record and proceedings of Chicot County Circuit Court hereinafter mentioned, said deed being marked Exhibit B. 2.

Respondents further represent, that after obtaining the said deed, and after giving due notice by publication in a newspaper, according to the statutes of said State of Arkansas, in such cases provided, said Woodfolk, on the 10th day of October, A. D. 1853, appeared in the Circuit Court of Chicot County, Arkansas, and then there filed his petition in said Court, wherein, after reciting the tax sale of said lands, his purchase and payment therefor, the execution of the deed aforesaid, and the publication of the notice aforesaid, to all persons interested to come forward and contest or object to the validity of such tax sale, said complainant prayed a confirmation of said tax sale in pursuance of the statutes of the said State of Arkansas, presenting and exhibiting therewith said deed, and a duly certified copy of the said notice and publication.

And upon said petition such proceedings were had that heretofore, to wit, on the 10th day of October, 1853, by the consideration, judgment, and decree of the said Circuit Court of Chicot County, in and by the said Court, after reciting and finding upon the proof exhibited the said sale, the grant of the certificate of purchase to the said complainant, the making, delivery, and acknowledgment of said deed, the giving the notice aforesaid, and filing of the said petition, and that all said proceedings were valid and in due form, and no cause being shown against the prayer of the said petition, it was considered, ordered, and decreed, by the said Court, that said sale be in all things confirmed, and that the title in and to the said land vest in said complainant and his heirs against the claim or title of all persons whomsoever; which proceedings and decree remain in full force, not in any wise vacated, annulled, or set aside, as will fully and at large appear on reference to a duly certified transcript of the record

and proceedings thereof, herewith exhibited and made part hereof, marked Exhibit A, No. 1, and prayed to be taken as part hereof; which transcript likewise contains a copy of the said deed, and said publication and notice of said application for confirmation, which are also made part hereof as if literally recited.

By means whereof respondents aver and submit, that the title of said complainant is perfected, absolute, and complete, in fee, in and to the said lands in the said decree mentioned, to wit, the northeast quarter of section twenty-seven, the northwest and southwest quarter of section twenty-two, section twenty-one, and the east half and the southwest quarter of section twenty-eight, all in Township nineteen south, of Range one west; which tracts embrace and include the said lands so purchased as aforesaid by said complainant from the said Frederic Notrebe; and that the said title, being so perfected, they aver and submit, that these respondents and the representatives of said Frederic Notrebe are entitled to the benefit thereof, as a perfection of the title under said sale of the said Frederic; and that after so perfecting said title it is a gross fraud upon the part of the said complainant to prosecute this suit, and to attempt to make the representatives of the said Frederic responsible on his warrantee, and for damages resulting from any incumbrance subsisting upon said lands, or indemnity against the same.

Respondents further aver, that upon being served with process in this cause, they proceeded to procure and obtain all the records and other evidences of title in regard to said lands, and could find only said papers, documents, &c., mentioned in their original answer, and those in possession of said Real Estate Bank, or the Trustees thereof, of which they could obtain control. And they were wholly unable to discover, and had no reason to suspect, and did not suspect, the existence of the said Tax sale; and respondents submit and aver, that said complainant, purposely to mislead and deceive respondents, concealed said Tax sale and proceedings thereon; and although said sale had occurred before the filing of the original bill, said *said* complainant fraudulently concealed the same, and omitted to mention or refer to the same in that bill, so as to put them upon their guard and inquiry; and in truth they were misled thereby, and put off their guard in respect to any other matters or proceedings than those in the said bill mentioned; and although said deed was made, acknowledged, and recorded, and said order of publication made, they never discovered or knew of the same, or suspected the same could relate to the lands in controversy, until within two months past, when one of their solicitors in this cause advised them of the facts, and that it was necessary and important to their interests in this cause to set up said deed, decree, and proceedings, by way of defence herein, and as a part of their answer.

Respondent further says, that they are ready and willing, and offer, whenever the amount thereof can be ascertained, to pay to the

said complainant all outlays, costs, and expenses in respect to the said tax sale and proceedings and confirmation thereof, and will deposit the same subject to the order of this Court, or pay the same to the said complainant whenever ordered so to do.

They submit and aver that said tax sale and confirmation enure to the benefit of the said Frederick Notrebe and his representatives; and they set up and plead the same as a perfect and complete title in fee in said complainant as against the whole world.

And having fully answered, they pray to be hence dismissed with their costs, &c., submitting themselves to any orders the Court may make to speed the cause, payment of costs, &c.

PIKE & CUMMINS,
Solicitors.

I, Ebenezer Cummins, one of the solicitors of said defendant, do state that I believe the foregoing answer to be substantially true, as to matters of fact therein alleged; and that the matters therein set forth are or may become in progress of the cause material to the substantial rights of the defendants therein in my opinion; and that supplemental answer is tendered in good faith and not for delay, or by collusion.

E. CUMMINS.

Sworn to and subscribed in open Court, April 20th, 1854.

WM. FIELD,
Clerk.

Filed 24th April, 1854.

WM. FIELD,
Clerk.

Exhibit A.—No. 1.

Pleas before the Hon. J. C. Murray, Judge of the 2d Judicial District of the State of Arkansas, in the Chicot Circuit Court, at the court-house, in the town of Columbia, on the 10th day of October, A. D. 1853.

W. W. Woodfolk, Exparte.

Application for the confirmation of tax title, in Chancery.

Be it remembered, that on the 10th day of October, A. D. 1853, the complainant by his counsel filed in open Court, his Petition, which is in the words and figures following, to wit:

Arkansas, *sct.*

To the Hon. John C. Murray, Judge of the Chicot Court, sitting in Chancery.

Your petitioner, William W. Woodfolk, would respectfully represent and show unto your honor, that on the 4th day of November,

A. D. 1850, at a sale for taxes by Joseph B. Threadgill, late sheriff and ex-officio in and for the County of Chicot, in the State of Arkansas, he became the purchaser of the following tracts and parcels of land situate in said County, to wit: the northeast quarter of section twenty-seven; the northwest quarter and the southwest quarter of section twenty-two, section twenty-one, and the east half and the southwest quarter of section twenty-eight, all in Township nineteenth south, of Range one west, for the taxes, penalty, and costs due thereon for the year, A. D. 1850, amounting to the sum of fifty-five dollars and seventy-six cents, which said sum your petitioner then and there paid to said Thredgill, and took from him a certificate of purchase of said lands. Your petitioner would further represent, that said tracts contain in all, one thousand four hundred and seventy-eight acres, and were regularly listed for taxation for said year, A. D. 1850, and arrearages aforesaid, in the name of Notrebe and Cummins, by said Thredgill, as such sheriff and collector as aforesaid, and regularly sold by him for non-payment of taxes, and penalty and costs due thereon for said year, 1850; the same having remained wholly unpaid up to and at the time of said sale as aforesaid. Your petitioner would further represent that afterwards, and after the lapse of twelve months from the time of said sale, as aforesaid, the time allowed by law for the redemption of said tracts of land, your petitioner, on the 14th day of October, A. D. 1852, presented to William J. Neale, who was at the time sheriff and ex-officio collector in and for the County aforesaid, the said certificate of said purchase of said Thredgill, and thereupon, upon the day and year last aforesaid, the said Neale, as such sheriff and collector as aforesaid, by virtue of the authority vested in him by law, made and executed unto your petitioner a deed, whereby he conveyed unto your petitioner the tracts of land above described, which said deed was then and there duly acknowledged by the said Neale, and has been filed for record, and been duly recorded, in the office of the recorder in and for said County of Chicot; and your petitioner must further represent and show unto your honor, that after your petitioner obtained from said Neale as aforesaid deed, to wit, on the 7th day of April, A. D. 1853, he caused to be published in the Arkansas Whig, a paper published in the State of Arkansas, as a notice, calling on all persons, who can set up any right to the lands so purchased as aforesaid, in consequence of any informality, or irregularity, or illegality connected with said sale, to appear on the first day of the present term of this Court, and to show cause, if any they could, why said sale to your petitioner as aforesaid should not be confirmed, which said notice your petitioner caused to be published in said newspaper for the space of six weeks next before the first day of the present term of this Court. Wherefore your petitioner prayed that by decree your honor may confirm the sale aforesaid, and for

such other and further relief as to equity and the premises may belong, &c.

W. W. WOODFOLK,
By P. TRAPNALL,
Solicitor.

Filed in open Court, October 10th, 1853.

S. W. COOPER,
Clerk.

Which said notice and proof is in the words and figures following, to wit:

Confirmation of Tax Title—to all to whom it may concern.

Know ye, that whereas William W. Woodfolk having purchased at sheriff's sale in the County of Chicot, in the State of Arkansas, on the 4th day of November, 1850, the following described tracts of land, to wit: the northeast quarter of section twenty-seven (27), the northwest quarter of the southwest quarter of section twenty-two (22), section twenty-one (21), and the east half and southwest quarter of section twenty-eight (28), all in Township nineteen (19) south, of Range one (1) west, all lying and being situate in the County and State aforesaid, for the taxes, penalty, and costs due thereon for the year A. D. 1850, amounting to the sum of fifty-five dollars and seventy-six cents, said tracts containing in all one thousand four hundred and seventy-eight acres (1478), and was regularly listed for taxation for said year of 1850, and arrearages aforesaid, in the name of Notrebe and Cummins, by Joseph B. Thredgill, Sheriff of said County, and ex-officio assessor and collector for said County. Now, therefore, in conformity with the law of the State of Arkansas, prescribing the mode of confirming titles to lands sold for non-payment of taxes, approved November 3d, 1836, notice is hereby given to all persons who can set up any right, title, or claim to said lands thus purchased, in consequence of any informality, irregularity, or illegality connected with said sale, to appear on the first day of the next October term of the Circuit Court of Chicot County, at a Court to be holden on the second Monday of October next, A. D. 1853, at the court-house in the Town of Columbia, in said County, and show cause, if any they can, why said sale should not be confirmed.

WM. W. WOODFOLK.

April 7th, '53.

(Prs. fee, $15 00) 42–6. W.

State of Arkansas, County of Pulaski.

Be it remembered, that on this day personally appeared before me, John J. Thompson, a Justice of the Peace, in and for the County aforesaid, John M. Butter, publisher of the "Arkansas Whig," who, being duly sworn, deposeth and saith, that the accompanying adver-

tisement is a true copy of a publication from Chicot County, describing certain lands purchased for non-payment of taxes, on the 4th November, 1850, by Wm. W. Woodfolk, has been regularly published in said newspaper for six weeks in succession, the first insertion of which was on the 7th April, 1853, and the last on the 12th May, 1853.

JNO. M. BUTTER.

Sworn and subscribed to, before me, this 17th September, 1853.

JOHN J. THOMPSON,
Justice of Peace.

Filed in open Court, October 10th, 1853.

S. W. COOPER,
Clerk.

Which said deed, referred to in said petition, is in the words and figures following, to wit:

This deed of conveyance, made this 14th day of October, in the year of our Lord one thousand eight hundred and fifty-two, between William J. Neale, Sheriff of the County of Chicot, in the State of Arkansas, and assessor and collector of the taxes therein, of the one part, and William W. Woodfolk, of the other part, witnesseth: That, whereas, the following tract of land, viz., the northeast fractional quarter of section 27, the northwest quarter and southwest quarter of section 22, section 21, and the east half and southwest quarter of section 28, all in Township 19 south, of Range one west, containing in the aggregate 1478 acres of land, lying in the said County of Chicot, in the State aforesaid, was among other lands, entered and listed, and assessed for taxation in said County, in the name of Notrebe and Cummins, non-residents of said County, agreeably to the laws of said State, regulating the collection of taxes therein, and whereas, neither the said owner thereof nor any other person or persons for them having paid the State and County taxes, assessed in pursuance of said laws to the sum of seventy-five dollars and seventy-six cents, due on said tract of land for the year 1850, within the time prescribed by law for the payment thereof, and there being no personal estate of the said Notrebe and Cummins known to the sheriff whereon to levy and make distress for the same, therefore, Joseph B. Thredgill, Sheriff of the said County of Chicot, did proceed to advertise and give at least four weeks' previous notice, according to law, that he would sell at public auction, on Monday, the 4th day of November, in the year 1850, at the court-house door, in the Town of Columbia, in the said County of Chicot, the said tract of land, or so much thereof as would be sufficient to pay the said taxes, together with the penalty, costs, and charges due thereon for the year 1850, which said advertisement, containing the name of the person purporting to be the owner, and a particular description of the said land, and the amount of taxes and penalty due thereon, was published

in the Arkansas State Gazette and Democrat, a newspaper printed at Little Rock, in the said State, and also was set up at the court-house door of said County of Chicot at least four weeks previous to the said day of sale; and on the said fourth day of November, in the year aforesaid, the said taxes, penalty, and costs on said tract of land still remaining unpaid, the said Joseph B. Thredgill, Sheriff, as aforesaid, did proceed to sell at public auction, at the court-house door of the said County of Chicot, the said tract of land, or so much thereof as would be sufficient to pay the taxes, penalty, and costs due thereon as aforesaid; whereupon William W. Woodfolk bid and offered to pay the taxes, penalty, and costs due on said tracts of land for the whole of said lands thereof, and no other person or persons bidding or offering to pay the same for a less quantity thereof, the same was struck off to the said William W. Woodfolk, which said State and County taxes, with the penalty thereon and costs, did amount to the sum of fifty-five dollars and seventy-six cents; and the said William W. Woodfolk having paid to Jo. B. Thredgill, Sheriff, as aforesaid, the sum of fifty-five dollars and seventy-six cents, the receipt whereof is hereby acknowledged, and the term of twelve months, the time allowed by law, for the redemption of said tract of land, having expired since the day of sale, and the said William W. Woodfolk having produced to me, William J. Neale, Sheriff of said County, the certificate granted by the said J. B. Thredgill, Sheriff, to the said Woodfolk, requiring of me a deed for the same, Know ye, that William J. Neale, Sheriff as aforesaid, by virtue of the authority in me vested by law, and in consideration of the said sum of fifty-five dollars and seventy-six cents, so received by Joseph B. Thredgill, Sheriff, as aforesaid, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said William W. Woodfolk, his heirs and assigns, all the right, title, claim, and interest of the said Notrebe and Cummins, and all and every person or persons whomsoever in the same, together with the tenements and hereditaments thereunto belonging; to have and to hold the said tract of land to the said William W. Woodfolk, his heirs and assigns, forever, as fully and absolutely as I, the said William J. Neale, Sheriff as aforesaid, under the authority aforesaid, might, could, or ought to sell and convey the same. In testimony whereof, I, William J. Neale, Sheriff as aforesaid, have hereunto set my hand and seal on the day and year first above written.

[SEAL.] WILLIAM J. NEALE,
Sheriff Chicot County, Arkansas.

In presence of
DANL. H. SESSIONS,
A. RUDD.

State of Arkansas, County of Chicot.

In the Circuit Court, October Term, A. D. 1852. October 15th, 1852.

Be it remembered, that on this the 15th day of October, A. D. 1852, William J. Neale, Sheriff of said County of Chicot, who is personally and officially known to the Court, appeared before the Court in proper person, and produced to the Court the foregoing deed from himself to William W. Woodfolk, and here in open Court, before the judge thereof, acknowledged that as such sheriff he had executed and delivered said deed for the uses and purposes and consideration therein mentioned and set forth, which acknowledgment is hereby certified.

Witness Samuel W. Cooper, Clerk of said Circuit Court, [L. S.] and the seal of said Circuit Court, at office, this 15th day of October, A. D. 1852.

SAML. W. COOPER,
Clerk.

Filed Oct. 15th, 1852, and recorded Oct. 22d, 1852.

SAML. W. COOPER,
Clerk.
By H. SMITH,
Deputy Clerk.

And on said 10th day of October, A. D. 1853, in the Circuit Court aforesaid, in Chancery sitting, the following decree was made, and entered of record in this cause, as the same appears in Chancery minutes B. of said Court, pages 138 and 139, to wit:

William W. Woodfolk, Exparte.

Now on this day comes William W. Woodfolk, by his Solicitor, Trapnall, and files his petition and proof of publication, whereby it appears to the Court that heretofore, to wit, on the fourth day of November, A. D. 1850, at a Sheriff and ex-officio Tax Collector's sale of non-residents' lands for the non-payment of taxes in the County of Chicot and State of Arkansas, that the said William W. Woodfolk purchased of Joseph B. Thredgill, the then Sheriff and ex-officio Tax Collector of said County, amongst others the lands hereinafter described, which was then and there sold for non-payment of taxes for the year 1850, by said sheriff, &c., and received from said Sheriff a certificate therefor, and the said land remaining unredeemed for the term of twelve months from said day of sale, on the 14th day of October, A. D. 1852, William J. Neale, the then Sheriff and ex-officio Tax Collector for said County and State, conveyed by deed under his hand and seal unto the said Woodfolk, in consideration of the sum of fifty-five dollars and seventy-six cents, paid by said Woodfolk to said Thredgill, Sheriff, &c., on the said 4th day of November, A. D. 1850, said lands in said deed and certificate

mentioned, viz.: the northeast quarter of section twenty-seven; the northwest quarter and the southwest quarter of section twenty-two; section twenty-one, and the east half and southwest quarter of section twenty-eight; all in Township nineteen south, of Range one west, all lying and being situated in the County and State aforesaid, containing in all one thousand four hundred and seventy-eight acres, which was listed, assessed, and taxed in the name of Notrebe and Cumming, non-residents of said County, for taxes as aforesaid, which deed was duly acknowledged and recorded in the Recorder's office of said County; and it further appearing to the satisfaction of the Court, that a notice calling on all persons who could set up any right to the lands so purchased, in consequence of any informality or any irregularity or illegality connected with such sale, to show cause at the first Circuit Court which should be held for the County of Chicot aforesaid *aforesaid*, six months after the publication of said notice why the sale so made should not be confirmed, which notice stated the authority under which the sale took place, and also contained the same description of the lands purchased as that described in the said conveyance to the said buyer, William W. Woodfolk, and declared the price at which the land was bought and the nature of the title by which it was held as aforesaid; which notice was published in the Arkansas Whig, a newspaper published in Little Rock, in the State of Arkansas, for six weeks in succession; the first insertion of which was on the 7th day of April, A. D. 1853, and the last on the 12th day of May, A. D. 1853; and the affidavit of the publisher of said newspaper being here filed, setting forth a copy of said notice, with the date of the first publication thereof, and number of insertions, sworn to and subscribed before a Justice of the Peace of the County of Pulaski, State of Arkansas, in which is the said Little Rock, in which said newspaper was published; and the Court being fully satisfied that said notice is in due form, and that it has been regularly published, that the land has been correctly described, and the price at which it was purchased truly stated, and no cause being shown against the prayer of said purchaser, William W. Woodfolk, to confirm the sale in question: It is therefore considered, ordered, and decreed, by the Court, that said sale be in all things confirmed, and that the title in and to said land vest in said William W. Woodfolk and his heirs, against the claim or title of all persons whomsoever.

State of Arkansas, County of Chicot.

I, Saml. W. Cooper, Clerk of the Circuit Court of Chicot County, do hereby certify that the foregoing 9 pages and this page contains a full, true, and correct transcript of the foregoing stated case, as the same appears upon the records and files of my office.

Witness my hand and seal of said Court, at office in
[L. S.] Columbia, this the 21st day of November, A. D. 1853.

SAML. W. COOPER,
Clerk.

By H. SMITH,
Deputy Clerk.

Filed 24th April, 1854.

WM. FIELD,
Clerk.

United States Circuit Court, April Term, A.D. 1854, Eastern District of Arkansas.

W. W. WOODFOLK
v.
E. C. MORTON ET AL.

E. Cummins, one of the solicitors of defendants, Morton and wife, states on oath, that he was retained in this cause before the original answer was filed, and prepared that answer for them, and aided the parties in examination of the facts and papers relating to the lands in controversy; and he was himself, and has no doubt said Morton and wife were, wholly ignorant of said tax sale in the supplemental answer mentioned; and in examination of the case were induced, by the allegations in the bill, tc confine themselves to the matters therein mentioned; that he had almost exclusive charge of said cause, and his partner, also retained, he believes never took any active management of the case; and said Morton and wife relied on affiant to prepare the facts for trial, and communicated with him fully upon the subject. That, in October last, in Chicot County, affiant accidentally became aware that said Woodfolk had a confirmation of a tax sale decreed to him in that Court; and although at the time he did not know at the time that the lands were the same involved in this suit, he was led to suspect they might be, and when he saw his clients afterwards, he communicated to them his supposition upon the subject, and either wrote himself and got them to write for a transcript of the record and proceedings in respect to said tax sale and confirmation. That said transcript, annexed to the supplemental answer, was finally sent to him and his partner, and some time in February last, affiant believes he received the same, and ascertained, for the first time, that the tax sale embraced the lands in controversy in this suit, and forthwith wrote to his client to be in attendance at this term, for the purpose of amending his answer, or filing a supplemental answer in respect thereof, and said Morton attended accordingly. That as such amendment was not matter of course, and he supposed the application would be resisted, he supposed it best, and wrote his client in that way, to apply to amend in term time. At all events, said Morton acted upon affiant's advice in that matter. But affiant believes no earlier application than the first Monday in April could

have been made to amend, as said Morton resides some distance from Court, and after learning the facts his answer could not reasonably have been prepared and presented before that time; and if any laches are chargeable on that account, it was the fault of affiant, and not of the party. That the application to amend is made in good faith, and affiant believes need and can produce no delay of the cause.

E. CUMMINS.

Sworn to, and subscribed in open Court, April 20th, 1854.

WM. FIELD.
Clerk.

Filed 24th April, 1854.

WM. FIELD,
Clerk.

And at Rules, on the 11th day of March, A. D. 1852, in the Clerk's Office of the Circuit Court of the United States, before the Clerk of said Court, the following proceedings were had, to wit:

W. W. WOODFOLK, Complainant,
v.
LOUIS L. REFEL, &c., as Executors of F. NOTREBE, deceased, et al., Defendant. } In Chancery.

This day come the said defendants, T. Farrelly and Edward Morton and wife, by their solicitors, Pike and Cummins, and presented their answers to the complainant's bill in this cause with exhibits, which, on their motion, were ordered to be filed.

Attest, WM. FIELD,
Clerk.

And at Rules, on the 7th day of November, A. D. 1853, being the first Monday of said month, in the Clerk's Office of the Circuit Court of the United States, before the Clerk of said Court, the following further proceedings were had in this cause, to wit:

WILLIAM W. WOODFOLK, Complainant,
v.
LOUIS L. REFEL, A. B. K. THETFORD, and TERRENCE FARRELLY, as Executors of FREDERIC NOTRIBE, deceased, and MARY FELICITE NOTRIBE, EDWARD MORTON and MARY his wife, sole Heirs of FREDERIC NOTRIBE, deceased, and SANDFORD C. FAULKNER, JOHN DRENNEN, HENRY L. BISCOE, LUTHER CHASE, and JAMES H. WALKER, residuary Trustees of the Real Estate Bank of the State of Arkansas, Defendants. } In Chancery.

This day came the said complainant, by P. Trapnall, his solicitor *his solicitor*, and presented and filed his replication to the separate

answer of Terrence Farrelly, one of the executors of Frederic Notribe, deceased, and to the joint and several answers of Edward C. Morton and Mary his wife, and it appearing that the said defendants, Louis L. Refel and A. B. K. Thetford, executors of the said Frederic Notribe, deceased, Mary Felicite Notribe, widow and heirs of the said Frederic, and Sandford C. Faulkner, John Drennin, Henry L. Biscoe, Luther Chase, and James H. Walker, residuary trustees of the Real Estate Bank, have failed to file their answers to the complainant's bill of complaint in this cause, although duly served with the writ of subpœna herein: on motion, therefore, of the said complainant, it is ordered, adjudged, and decreed, that the matters and things set forth in said complainant's bill of complaint, as to the said Louis L. Refel, A. B. K. Thetford, as executors, &c., and the said Mary Felicite Notrebe, and the said Sandford C. Faulkner, John Drennen, Henry L. Biscoe, Luther Chase, and James H. Walker, residuary trustees of the Real Estate Bank, be and the same is hereby taken for confessed.

Attest, WM. FIELD, Clerk.

The United States of America, Eastern District of Arkansas, *sct.*

Be it remembered, that, at a Circuit Court of the United States, in and for the Eastern District of Arkansas, continued and holden at the court-house in the City of Little Rock, on the 24th day of April, A. D. 1854 (being at the April Term), the Honorable Daniel Ringo, United States District Judge, of the Eastern and Western Districts of Arkansas, present, and holding said Circuit Court, the following proceedings were had on the Chancery side of said Circuit Court, to wit:

WLLIAM W. WOODFOLK, Complainant,
v.
LOUIS L. REFELD, A. B. K. THETFORD, and TERRENCE FARRELLY, as executors of FREDERICK NOTRIBE, EDMUND MORTON, and MARY, his wife, sole heirs of FREDERICK NOTRIBE, deceased, and SANDFORD C. FAULKNER, JOHN DRENNIN, HENRY L. BISCOE, LUTHER CHASE, and JAMES H. WALKER, residuary trustees of the Real Estate Bank of the State of Arkansas, Defendants. } In Chancery.

At this day comes said complainant, by Trapnall and Curran, and said defendants, Morton and wife, by Pike and Cummins, and said Morton and wife make application for leave to file an amended and supplemental answer; on this behalf, upon consideration, leave is granted, and thereupon, such amended and supplemental answer, with the Exhibit, marked A, No. 1, therein referred to, is accord-

ingly filed, to which answer said complainant enters his replication, in short, upon the record; by consent and by agreement of parties, it is ruled and ordered, that complainant have leave, if he shall think proper to do so, to file an amendment or supplement, or both, to his bill in this behalf, on or before the first day of the rule-day in October next.

And, by like agreement, it is further ordered, that either party have leave to take testimony, at any time between this and the first day of the next term of this Court, and this cause be and the same is hereby set down for final hearing at the said next term.

And at a Circuit Court of the United States, in and for the Eastern District of Arkansas, begun and holden at the court-house in the City of Little Rock, on Monday, the ninth day of April, A. D. 1855, being the second Monday of said month, the Honorable Daniel Ringo, United States District Judge, presiding and holding said Court, the following further proceedings were had in this cause, to wit:

WILLIAM W. WOODFOLK, Complainant,
v.
FREDERIC NOTREBE, exec'rs, et al., Defendants. } In Chancery.

This day came the parties by their solicitors, and the complainant filed his replication to the amended and supplemental answer of Edward C. Morton and wife, and also a notice, that he would, in the trial in this cause, offer proof of certain exhibits filed in this cause.

And at a Circuit Court of the United States, for the Eastern District of Arkansas, continued and holden at the court-house, in the City of Little Rock, on the 3d day of May, 1855, Peter V. Daniel, United States District Judge, presiding, and holding said Court, the following further proceedings were had in this cause, to wit:

WILLIAM W. WOODFOLK, Complainant,
v.
THE EXECUTORS and HEIRS of FREDERIC NOTRIBE, deceased, et al., Defendants. } In Chancery.

This day came the parties aforesaid by their solicitors, and this cause was submitted to the Court, upon the bill, answer, replication, and evidence, in the cause, and the same was taken under advisement.

And at a Circuit Court of the United States, for the Eastern District of Arkansas, continued and holden at the court-house, in the City of Little Rock, on the 11th day of October, A. D. 1855, the Honorable

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Daniel Ringo, presiding, and holding said Court, the following further proceedings were had in this cause, to wit:

WILLIAM W. WOODFOLK, Complainant,
v.
LOUIS L. REFEL, A. B. K. THETFORD, and TERRENCE FARRELLY, as executors of FREDERIC NOTRIBE, deceased, MARY FELICITE NOTRIBE, widow, and EDWARD C. MORTON, and MARY, his wife, sole heirs of the said FREDERIC NOTRIBE, and SANDFORD C. FAULKNER, JOHN DRENNIN, HENRY L. BISCOE, LUTHER CHASE, and JAMES H. WALKER, residuary trustees of the Real Estate Bank of the State of Arkansas, Defendants.

This cause come to be heard, at the present term of this Court, on the bill, the answer of Terrence Farrelly, one of the executors of the last will and testament of Frederic Notribe, deceased, the original and amended answer of Edward C. Morton, and Mary F., his wife, the replication to said answer, the exhibits in said bill, and answers mentioned, the testimony of Alfred J. Shotwell and William G. Cambell, the letter taken and read by consent, and proof of the exhibits made at the trial, without objection, and was argued by counsel, as well on the part of the complainant as of the said defendants, Farrelly, and Morton and wife, and submitted to the Court; whereupon the Court doth find the following described lands, situated on and near the Mississippi River, in the County of Chicot, and State of Arkansas, to wit, the northeast fractional quarter of section twenty-seven, the southeast, northeast, and the northwest quarters of section twenty-eight, section twenty-one, and the southwest and northwest quarters of section twenty-two, all in Township nineteen south, of Range one west, containing, together, fourteen hundred and seventy-eight acres, and eighty-four hundredths of an acre, were purchased by the complainant, William W. Woodfolk, of the said Frederick Notribe, at and for the consideration and price of fifteen thousand five hundred and nineteen dollars which has been fully paid.

That said Notribe, by his obligation, bearing date the 22d day of October, A. D. 1845, duly executed by him, and the said Mary F. Notribe, his wife, for the said consideration stipulated, and become bound for the conveyance of said lands to said complainant, William W. Woodfolk, and his heirs, on the full and complete payment of the purchase-money, free and discharged of and from all incumbrances done or suffered by him, the said Frederic Notribe, or subsisting at the time of such sale; that previous to the sale, the said Frederick Notribe and William Cummins, by their deed bearing date the 2d day of July, A. D. 1837, duly executed, acknowledged, and delivered, as subscribers for stock of the Real Estate Bank of the

State of Arkansas, had mortgaged the said lands to said Bank, as a security for thirty thousand dollars of the stock of said Bank, by them jointly subscribed, the payment of their bond to the Bank for the same, payable on the 26th day of October, 1816, with interest thereon, at the rate of five per cent. per annum, said interest payable half yearly, until the principal become due, and for the payment of so much or such sum of the bonds of the State of Arkansas, issued by said State in favor of the said Bank, and the interest thereon, or such part thereof, as should be equal to the stock allowed and granted to said Notribe and Cummins, the said mortgagors to retain the possession, and enjoy the use of said lands, until they should be legally sold to satisfy the obligations aforesaid, which are based upon, or arose out of their stock subscription aforesaid; and which deed of mortgage was duly recorded in the said County of Chicot, on the 23d day of October, 1837. That said complainant, from the time of his purchase of said lands, has enjoyed the possession and use thereof undisturbed, and made thereon exclusive and valuable improvements.

That for the year 1850, said lands were assessed for taxation, and taxed in the name of Notribe and Cummins, as owners thereof, and nonresidents of the County of Chicot; and said taxes thereon being unpaid, the lands were therefore sold in pursuance of law, on the 4th day of November, A. D. 1850, and purchased by said complainant, to whom they were afterwards, on the 14th day of October, 1852, conveyed by the Sheriff of said County; and such sale afterwards, on the 10th day of October, 1853, was confirmed in pursuance of law, by the judgment or decree of the Circuit Court of the said County of Chicot.

That the entire transaction between the complainant and Notribe was *bona fide*, and wholly free from fraud, and the parties must be regarded as possessing full knowledge of the existence of such mortgage, at the time of said sale and purchase, and of the incumbrances thereby produced and subsisting on said lands.

On consideration whereof it appears to the Court, that by the contract aforesaid, the complainant, Woodfolk, was to have the lands free of incumbrance; and the said Frederic Notrebe bound himself, his heirs, and legal representatives, to convey them disincumbered, by a sufficient deed, with general warranty of title and relinquishment of dower, on payment being made in full of the consideration or price as stipulated. But said incumbrances being not yet at maturity, and of such character that it cannot be definitely and effectually removed by said Notribe, or his heirs or legal representatives, before the maturity of the said obligation of Notribe and Cummins to said Bank for thirty thousand dollars of stock therein, and of the said bonds of the State of Arkansas, issued in favor of said Bank, to wit, until the 26th day of October, 1816. And that the sale and purchase of said lands by said Woodfolk, for nonpay-

ment of taxes charged thereon as aforesaid, for the year 1850, cannot in equity be admitted to divest the lien of such mortgage, or prejudice the holders of either the said bonds of the State or the bond aforesaid of Notrebe and Cummins, given on account of their stock subscription aforesaid, in respect of their said security for payment thereof, but the title thereby acquired and vested in said Woodfolk, must be held subject to such lien and incumbrance as aforesaid in said lands, until the same shall be legally discharged or released: and in the opinion of this Court, under the circumstances disclosed, the complainant is well entitled to indemnity against the incumbrance to said mortgage; and that the said heirs and legal representatives of said Frederic Notrebe are in equity bound to furnish it, if they have received, or hold by inheritance or otherwise, moneys of, or derived from, any estate which was of the said Frederic Notribe, deceased, at the time of his death.

Therefore the Court doth adjudge, order, and decree, that the said defendants, Louis L. Refel, A. B. K. Thetford, and Terrence Farrelly, as executors of the last will and testament of said Frederic Notribe, deceased, or the survivors or survivor of them, do procure the legal extinguishment of the lien and incumbrance of *of* the said mortgage of said lands, made by said Frederic Notribe and William Cummins, to the Real Estate Bank of the State of Arkansas, by their said deed, bearing date the 22d day of July, 1837, set forth and exhibited in the pleadings in this suit, and of every other incumbrance thereof suffered by said Frederic Notribe, as existing on the 22d day of October, 1845, if any such there be still subsisting, so soon as the same can be lawfully done; and upon such extinguishment of all such incumbrances thereon subsisting, do convey the said lands to said complainant, William W. Woodfolk, and his heirs, by good and sufficient deed, with a general warranty of title, and a relinquishment of all dower therein by the said Mary F. Notrebe, widow of the said Frederic Notrebe, deceased, if she shall be then living; and that such deed of conveyance by the said executors, and relinquishment of dower by the said widow by *by* them respectively, in due form of law executed, acknowledged, and delivered, so as to vest in said complainant and his heirs a valid title to said lands, and every part and parcel thereof, free and discharged of all incumbrances as aforesaid.

And that the said executors and widow, and the said defendants, Edward C. Morton and Mary F., his wife, do in the mean time, until such incumbrance or incumbrances as aforesaid on said lands shall be extinguished, and the said lands conveyed as aforesaid, hold and keep the said complainant, William W. Woodfolk, his heirs and assigns, indemnified against all such liens and incumbrances as aforesaid, and especially the lien of said mortgage made to the Real Estate Bank of the State of Arkansas, for thirty thousand dollars on account of the stock subscription of Notrebe and Cummins in said

Bank, which indemnity may at the election of said defendants, Edward C. Morton and wife, consist of bonds of the State of Arkansas issued to said Bank to the amount of thirty thousand dollars, or such other sum as shall be found equal to the stock of said Bank, awarded to said Notrebe and Cummins and secured by said mortgage, to be by them deposited in this Court, to be held and appropriated under its order to extinguish the said mortgage lien on said lands, or of real estate of the value of thirty thousand dollars, held by valid title, unincumbered, to be by them conveyed to the Clerk of this Court in trust by sufficient deed or deeds in due form of law executed, acknowledged, and recorded, to be held, and, if necessary, disposed of by said trustee under the order of this Court, to extinguish the said mortgage lien on said lands; or the said amount of thirty thousand dollars may be secured in part by the deposit of bonds and the residue by the conveyance of lands in trust as aforesaid. Or if it shall appear that the sum for which said lands are bound by the said mortgage is greater or less than the said sum of thirty thousand dollars, the indemnity to be secured in the manner aforesaid shall be increased or diminished so as to correspond therewith, and equal the sum for which said lands are so bound; but if the property and moneys received by said Morton and wife from the estate which was of said Frederic Notrebe at the time of his death, with what they are yet entitled to receive therefrom, shall not be equal to the sum aforesaid, or the amount for which said lands are bound under the mortgage aforesaid, then the indemnity required of them to be secured in manner aforesaid shall be restricted to such amount as they have received and are entitled to receive from said estate; and it is adjudged, ordered, and decreed, that said Morton and wife do determine their election as to description of indemnity they will furnish, whether bonds or lands as aforesaid, or both, and deposit with the Clerk of this Court the bonds or conveyances of lands, or both, as required hereby on or before the first day of the next term of this Court; and doth further adjudge, order, and decree, that the said defendant, Edward C. Morton and Mary F., his wife, Mary Felicite Notrebe and the said Lewis L. Refeld, A. B. K. Thetford and Terence Farrelly, as executors of the last will and testament of said Frederic Notrebe, deceased, do pay to the said complainant, William W. Woodfolk, his costs in and about this suit expended to be taxed; and to their co-defendants, the said residuary Trustees of the Real Estate Bank of the State of Arkansas, Henry L. Biscoe, Sanford C. Faulkner, James W. Walker, John Drennen, and Luther Chase, their costs in and about this suit expended to be taxed.

And doth order that this cause be and it is hereby referred to the Clerk of this Court, who is hereby appointed a special Master in Chancery, to take and state an account of the sum for which said lands are bound under the mortgage aforesaid, set forth and exhibited in the pleadings in this cause; and also to take and state an account

showing what money and property the said Edward C. Morton and wife, and the said Mary F. Notrebe, widow of said Frederic Notrebe, have severally received and are entitled to receive which were of the estate of the said Frederic Notrebe at the time of his death; and a further account showing what portion of said estate, if any, remains to be administered, setting forth all particulars thereof as far as practicable, and, if necessary to the due execution of this order, said Master is hereby directed to call before him and examine on oath any of the parties to this suit, and also take the testimony of witnesses touching any of the matters aforesaid, and make report to this Court.

Whereupon the said defendants by their solicitor filed here in Court their notice of appeal to the Supreme Court of the United States, from the decree in this cause. Which appeal is granted upon condition that the defendant, Edward C. Morton, execute an appeal bond to the complainant in the sum of fifteen thousand dollars, within sixty days from this date, with good and sufficient securities conditioned according to law, which bond is to be approved by this Court or a Judge thereof.

Supreme Court of the United States.

WILLIAM W. WOODFOLK, Complainant,
v.
LOUIS L. REFELD, A. B. K. THETFORD, and TERRENCE FARRELLY, as Executors of the last will and testament of FREDERIC NOTREBE, MARY FELICITE NOTREBE, EDWARD C. MORTON, MARY F. MORTON, and others, Defendants. } Appeal.

Know all men by these presents, that we, Edward C. Morton, a principal, and Bushrod W. Lee, and Robert H. Douglass, as sureties, and held and firmly bound unto the above-named William W. Woodfolk, in the sum of fifteen thousand dollars, lawful money of the United States, to the payment whereof, well and truly to be made to the said William W. Woodfolk, his executors, administrators, or assigns, we bind ourselves, and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the tenth day of October, A. D. 1855.

The condition of the above obligation is such, that whereas the said Louis L. Refeld, A. B. K. Thetford, and Terrence Farrelly, as executors, and said Mary F. Notrebe, Edward C. Morton, and Mary F. Morton, have taken an appeal to the Supreme Court of the United States, from and to reverse the decree rendered in the above entitled suit by the Circuit Court of the United States for the Eastern District of Arkansas. Now, therefore, if the said appellants shall prosecute their said appeal with effect, and answer all damages and costs

if they fail to make good their said appeal, then this obligation shall be void, else shall remain in full force and virtue.

EDW'D C. MORTON, [SEAL.]
B. W. LEE, [SEAL.]
ROB'T H. DOUGLASS, [SEAL.]

Signed and sealed in our presence.
A. O. DOUGLASS,
LLOYD TILGHMAN.

I hereby approve the within bond, the surety therein named, from information deemed reliable, being in my opinion sufficient to pay the penalty therein specified. October 22d, 1855.

DANIEL RINGO,
U. S. Judge, for the Eastern District of Arkansas.

Filed the 23d of October, 1855.
Attest, WM. FIELD,
Clerk.

In the Circuit Court of the United States for the Eastern District of Arkansas, April Term, 1855.

WM. W. WOODFOLK, Complainant,
v.
F. NOTREBE'S heirs and representatives and others, Defendants.

To the above-named defendants.

Take Notice.

That on the final hearing of the above entitled cause, I shall offer to prove ore Tenas Exhibits 1, 2, 3, 4, 7, and 8, referred to in the bill of complaint herein.

W. W. WOODFOLK,
By PHIL. TRAPNALL.

Filed 9th April, 1855.

WM. FIELD,
Clerk.

Wm. G. Campbell's statement.

I left here in November 1853, with lumber, and we got into an eddy at Gen'l Wm. W. Woodfolk's in Chicot County. He stated that the place on which we were (which was his plantation) he purchased of F. Notrebe. He stated also that he had from the time of the purchase made off of said land by the sale of wood one thousand dollars each year after paying expenses, and that he had made no cotton previous to the second year.

When I was there, 1853, his crop was about 300 bales. He told me he had raised cotton the year before, but none previous to that. He had raised some corn, however.

He asked my opinion as to tax titles. I told him when they were regular they were adjudged to be good. He then said that he had purchased said lands for the taxes and would rely on his title; and said further, that if he could hold it by that title, he would not pay the purchase-money to Notrebe.

There were about 400 acres cleared; each acre here would be worth $2 per acre on rent.

WM. G. CAMPBELL.

Sworn to and subscribed before me, this 21st April, 1854.

J. A. HUTCHINGS,
Justice of the Peace.

We agree this deposition may be read in evidence in the case of Wm. W. Woodfolk v. F. Farrelly et al., Executors, and E. C. Morton and wife, in U. S. Circuit Court, Arkansas, Eastern District, in Chancery.

PIKE & CUMMINS,
Solicitors for Defendants.

LOUISVILLE, March 15th, 1847.

Genl. W. W. Woodfolk, Nashville.

DEAR SIR:—I wrote you last fall proposing to cash your two notes with you, which I hold for $2279 each, first due 1st April, second 1st April, 1848, to which I have never received a reply. I herewith enclose you a letter received from Col. Farrelly, Mr. Notrebe's attorney, addressed to me, by which you can see the views of Mr. Notrebe at the time I traded for them and the reason for the special assignment. I have since been to Arkansas, and was down in January and would have seen you, but was up at J. W. Clay's when you left for Nashville. I have the assurance from M. Notrebe that if you will cancel the trade, he will refund you the money paid and its interest; and pay for your improvements if you doubt his warrantee, or if you require it, he will give you any security you may name to be right to complete his title, which he thinks is really now so, as one half of the land has always been clear, and the half in the name of Cummins, his son-in-law, has been made so by his, Notrebe, having paid the incumbrance on it. I shall be pleased to satisfy you in any way; you can be indemnified to the amount of one hundred thousand, it may be, but I have borrowed money on the faith of the first note, and it will be of great disadvantage to me not to get it when due, and to you, a man of wealth, with the means, it is not an inconvenience to pay your notes, when you run no risk in doing so, and release one who got it from the representations of your friends as cash when due. When I was below, I learned you would be back, and likely to go to New Orleans in this month, and I therefore left the two notes with Harry Hill, with a letter explaining, who said you would at once pay the first, and, may be, cash the second, which I am willing you shall at 10 per cent. My dear Sir, I hope you will be satisfied, and send and pay the one due 1st April,

and if you feel the slightest fear of your safety, Mr. N. will indemnify you further, and so will I. Please let me hear from you, and excuse my inviting your attention, being a stranger; I plead the necessity of my cash in justification.

Yours, truly,

A. L. SHOTWELL.

Indorsed, This is paper "B," referred to in my deposition.

The deposition of Alfred L. Shotwell, taken at the counting-room of Smith & Shotwell, in the City of Louisville, County of Jefferson, and State of Kentucky, on the 30th day of March, 1854, to be read as evidence on the trial of a suit in Chancery, pending in the Circuit Court of the United States, for the Eastern District of Arkansas, wherein W. W. Woodfolk is complainant, and the widow, heirs, and executors of Frederick Notrebe, deceased, and also are defendants. The deponent, being of lawful age, and first duly sworn, deposes and says, in answer to the annexed interrogatories, and cross-interrogatories:

Interrogatory 1st. He answers: I knew Frederick Notrebe well—was at his house frequently in the Post of Arkansas; I am also well acquainted with Terrence Farrelly; I became acquainted with both about the same time, at the Post of Arkansas, in the year 1840, or thereabouts. I became acquainted with W. W. Woodfolk, the complainant, about the year 1846; I saw him first, I think, at Columbia, Arkansas.

Interrogatory 2d. He answers: I believe Col. Farrelly was the agent, attorney, and confidential legal adviser of Mr. Notrebe, I have no doubt of it, Mr. Notrebe told me so, and so has Col. Farrelly.

Interrogatory 3d. He answers: I knew of the sale by Frederick Notrebe of the Chicot lands to Genl. Woodfolk; it was for 1280 acres, if I mistake not, and situated at or near the Louisiana line with the State of Arkansas. I traded with Mr. Notrebe for two of the notes of Genl. Woodfolk given for said land, and the letter addressed to me by Farrelly, 4th December, 1846, as referred to in the fourth interrogatory is in Col. Farrelly's handwriting, and was in answer to one from me on the subject of the notes to which it refers. The letter dated 15th March, 1847, was written by me to W. W. Woodfolk at Nashville, as it appears on its face, and what I then said was drawn from me by Farrelly's letter which I sent to Genl. Woodfolk, that he might see Mr. Notrebe's views as reflected by Col. Farrelly, and thereby avoid his refusal to pay the note then near due. The notes were as I there state them, and have since been paid to me by W. W. Woodfolk.

Interrogatory 4th. He answers: I have answered in the answer I give to the 3d, but to be plain, letter marked A, was received by me, and is

in the handwriting of Terrence Farrelly, and letter marked B is in my handwriting; and both are so indorsed, and made part hereof.

Cross-interrogatories. He answers: It has been so long ago, since I had occasion to think on other peoples' matters, that I do not now remember anything to answer to these interrogatories. What I stated in answer to 2d interrogatory, is from recollection while I lived in Arkansas. Col. Farrelly was, according to my understanding of his position, with Mr. Notrebe, as I stated, but as to what written delegated power, or whether any, I do not now remember. But I do remember, that he had the highest confidence in him, and in all matters of importance consulted him.

A. L. SHOTWELL.

State of Kentucky, Jefferson County, *ss.*

I, G. J. Johnston, a Justice of the Peace of said County, do hereby certify, that on this day the foregoing deposition of Alfred L. Shotwell was taken, subscribed, and sworn to by said Shotwell, before me, at the time and place, and for the purpose stated in the caption thereof. Given under my hand and seal, this March 30th, 1854.

Fee $5, paid by complainant.

[SEAL.] G. J. JOHNSTON,
J. P. J. C.

Filed 28th August, 1854.

WM. FIELD,
Clerk.

Opened and published this 12th day of July, A. D. 1854, by consent. Phil. Trapnall, Solicitor for complainant. Pike and Cummins, Solicitors for defendants.

In the Chancery side of the Circuit Court of the United States, for the Eastern District of Arkansas.

WM. W. WOODFOLK, Complainant,
v.
The Widow, Heirs, and Executors of FREDERIC NOTREBE, dec'd, et al., Defendants.

Interrogatories to be administered to Alfred L. Shotwell, to be produced, sworn, and examined, in the above entitled cause.

Interrogatory 1st. State whether or not you knew the said Frederic Notrebe in his lifetime; and whether or not you know said complainant, and said defendant Terrence Farrelly; if yea, please state when and where you knew them.

Interrogatory 2d. State whether or not the said Terrence was the legal adviser and general agent of said Frederic, and particularly as to the buying and selling of lands in the State of Arkansas; if yea, state the fact, and how you know it.

Interrogatory 3d. State whether or not you ever heard the said Frederic, in his lifetime, and the said Terrence, or either of them, say anything in regard to a sale made by the said Frederic, to complainant, of certain lands in Chicot County, Arkansas; if yea, please state fully all you ever heard them, or either of them, say on the subject.

Interrogatory 4th. Look upon the papers hereto attached, marked A. and B., and state whether or not you recognize the handwriting of each, and if yea, please state in whose handwriting each appears, and whether the same genuine.

Interrogatory 5th. Do you know, or can you set forth any other matter or thing, which may be a benefit or advantage to either of the parties to this suit? If yea, state the same fully and particularly in your answer.

CURRAN & TRAPNALL,
Solicitors for Complainants.

Cross-Interrogatories.

1st. If you know of the existence of any instrument appointing Farrelly agent of Notrebe to sell lands or otherwise, please annex it to your deposition; or if lost, please state the fact, and the contents of such instrument? Did you ever know from any information coming directly from Mr. Notrebe that Farrelly was his agent at all or ever? if so, state how you acquired such information,—by conversation or writings? If you know anything upon the subject, did you ever know that Farrelly was anything more at any time than the mere legal adviser of Notrebe, to be called in and consulted as to legal matters, when arising, or business matters when occurring?

2d Int. Defendants object to so much of third interrogatory as inquiries of statements of Farrelly.

Please state when, where, and how any such statements (as inquired of in 3d int.) of Notrebe were made? How came they to be made? Were they in any way the inducement to complainant to make purchase of the lands? If you detail any such conversation, state the language as near as you can, and all particulars in respect thereof, when and to whom the statements were made, &c.

PIKE & CUMMINS.

March 14th, 1854.

Paper "A" referred to in the Deposition of A. L. Shotwell. Col. Farrelly's Letter.

Arkansas Post, December 4th, 1846.

Col. A. L. Shotwell.

Dear Sir: Mr. Notrebe, who has been confined by an attack of rheumatism for some days, has handed the letter and enclosure he received from you a few days previous, on the subject of General Woodfolk's notes, with instructions to write you in answer; he re-

quests me to assure you that he regrets to learn that you found difficulty in negotiating them; but that has arisen from no fault of his; he sold Gen'l W. the land for which the notes you know were taken in consideration, and as Mr. Notrebe had given his bond in a penal sum to convey in fee simple with general warrantee and relinquishment of dower, he could not imagine that any difficulty would ever have arose in regard to the payment on account or through fear of any adverse claim of title by Mr. Barnett; you know the reason of the special indorse on the notes was to prevent a personal recourse on him, as the notes were a lien on the land more than amply sufficient for the payment; at the time General W. purchased the land it was under mortgage to the Real Estate Bank for $11,000, which has since been wholly paid off. At the last term of our Supreme Court, however, a decision was made in one of the Real Estate Bank cases that is calculated to create considerable confusion, so long as it stands unreversed or not modified; the purport of the decision is that the Real Estate Bank could not proceed legally to foreclose mortgages on the stock notes until after the expiration of the charter in 1860, which is tantamount that sales heretofore made under decrees of foreclosure were invalid, consequently Mr. Barnet's appeal, as well as the decree under which the land was sold, falls to the ground, so long as the opinion stands in its present shape; this may present further difficulties to the mind of General Woodfolk to dissuade him for cashing the notes, although I know that Mr. Notrebe will take other means, if it should become necessary to support his warrantee and guard against the danger of an adverse claim, or other incumbrance that might, per possibility, endanger his title. He, Mr. Notrebe, requests me to say to you, that if you can do no better with the notes, he will take them back, and place you in the same situation you were, viz., he will return the same amount of Bank credit that he received from you for them, with Bank interest from the time of the exchange; and I imagine, if General W. is tired of his bargain, or doubts the title, he would be willing to do the same with him, as the land would now bring two thousand dollars more than he sold it to him for.

Truly yours,
T. FARRELLY.

(Indorsed.) This is the paper A, referred to in my deposition.

The United States of America, Eastern District of Arkansas.

I, William Field, Clerk of the Circuit Court of the United States, in and for the Eastern District of Arkansas, do hereby certify that the foregoing transcript contains a full and complete copy of the record, papers, and proceedings, in the case of William W. Woodfolk, against Louis L. Refeld, A. B. K. Thetford, and Terrence Farrelly,